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GENERAL ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hon Minister for Labour Relations

and

Trades and Labor Council of Western Australia and Others.

No. 810 of 1995.

COMMISSION IN COURT SESSION

COMMISSIONER R.N. GEORGE.
COMMISSIONER A.R. BEECH.
COMMISSIONER C.B. PARKS.

20 August 1997.

Order.

HAVING heard Ms V. Zupanovich on behalf of the Applicant and Ms S. Mayman on behalf of the Trades and Labor Council of Western Australia and by consent, the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Western Australian Government Employees' Redeployment, Retraining and Redundancy General Order No. 1329 of 1988 (as varied by Order Nos 1465 of 1992, 820 of 1993 and 1059 of 1993) be further varied in accordance with the following Schedule 1 attached to this Order and that such variation shall have effect on and from 30 July 1997.

BY THE COMMISSION IN COURT SESSION

(Sgd.) R.N. GEORGE,

[L.S.]

Commissioner.

SCHEDULE 1

Schedule B—List of Awards to Which This Order Applies:
Delete this Schedule and insert in lieu the following—

SCHEDULE B

LIST OF AWARDS TO WHICH THIS ORDER
APPLIES—

Aboriginal Police Aides Award; 31 of 1979

Government Officers Salaries, Allowances and Conditions Award 1989, PSA A3 of 1989

Police Award, 1965; 2 of 1966

Police Cadet's Award; 7 of 1976

EDITOR'S NOTE: The following is a consolidation of the Western Australian Government Employees Redeployment, Retraining and Redundancy General Order No. 1329 of 1988.

WESTERN AUSTRALIAN GOVERNMENT
EMPLOYEES REDEPLOYMENT, RETRAINING AND
REDUNDANCY GENERAL ORDER

1.—SCOPE

This Order shall apply to all employees employed by the Government of Western Australia in the Public Sector as defined in Clause 2.—Definitions of this Order under awards of the Western Australian Industrial Relations Commission listed in Schedule B of this Order. This Order shall not apply to employees listed in Schedule A of this Order.

2.—DEFINITIONS

“Government”—means the Government of Western Australia and does not include Commonwealth or Local Government.

“Public Sector”—means all State Government departments, trading concerns, instrumentalities, agencies or statutory bodies established by or under a law of this State, including primary produce bodies, regulatory bodies, quasi-judicial bodies, trustees, advisory committees and regional bodies.

“Redundancy”—means a situation when a job performed by an employee ceases to exist or becomes surplus to requirements.

3.—REDUNDANCY

An employee shall not be made redundant by the employer other than in accordance with Clause 4.—Redeployment and Retraining of this Order.

4.—REDEPLOYMENT AND RETRAINING

(1) Suitable Alternative Employment

Subject to this clause, each employee whose position is declared redundant shall, subject to subclause (7) of this clause, be transferred to suitable alternative employment either within his/her Department/Authority or with another Government employer.

Suitable alternative employment shall be defined as that which provides the employee with a position which—

(a) is a permanent position with a Government employer;

- (b) has a wage or salary as close as possible to that of the employee's existing position; and
- (c) does not require the employee to change his/her place of residence in order to take up the position,

and has regard to—

- (a) the relevance of the duties and responsibilities, to the qualifications and experience of the employee and the competence of the employee; and
- (b) the ordinary hours of duty being in general no less than those worked by the employee in his/her original position.

(2) Alternative Employment or Training

- (a) The suitability of alternative employment or training shall be determined by the Director of the Office of Redeployment after consultation with the employer, employee and union concerned in accordance with subclause (1) of this clause and having regard for the particular circumstances of each employee.

Any dispute between the parties over whether a position falls within the definition of suitable alternative employment as prescribed by subclause (1) of this clause, may be referred to the Commission by any party to the dispute.

- (b) Where suitable alternative employment is unable to be identified for an employee, the employee may elect within three (3) months from the date the position becomes redundant to transfer to a position outside that defined as suitable or leave the services of the employer.

An employee who elects—

- (i) to leave the service of an employer shall be paid the severance and other payments prescribed by Clause 6.—Selective Voluntary Severance or Early Retirement of this Order.
- (ii) to transfer to a position under the terms of this clause shall be entitled to the provisions of Clause 5.—Income Maintenance of this Order.

(3) Annual Leave and Long Service Leave

Annual and long service leave accrued prior to the date of redeployment shall be calculated in accordance with the relevant award or agreement and transferred to and credited by the new employer.

(4) Sick Leave

Unused sick leave accrued prior to the date of redeployment shall be transferred to and credited by the new employer.

(5) Leave and Assistance to Seek Alternative Employment

- (a) The employer shall facilitate redeployment by granting employees to be redeployed reasonable leave to attend interviews and career counselling without loss of pay.
- (b) Where a prospective employer does not meet the cost of travel to an employment interview, the cost of reasonable travel and incidental expenses including it necessary overnight accommodation associated with the interview shall be borne by the employer.

(6) Trial Period in Alternative Employment

- (a) An employee shall be granted a trial period of six (6) months in any alternative employment during or at the completion of which the employee may elect to resign if that employment is not suitable, in which case the employee shall receive the entitlements provided by Clause 6.—Selective Voluntary Severance or Early Retirement of this Order.

This entitlement is only available to employees who fall within paragraph (b) of subclause (2) of Clause 4.—Redeployment and Retraining of this Order.

- (b) By agreement between the employer and employee, leave without pay may be approved with the consent of the Director of the Office of Redeployment where it is sought by a redeployee as a means of exploring career options outside the public sector.

This period of leave without pay will not count as service for any reason. However, the employee's

service shall be deemed continuous and the employee retains the right to accept the offer of severance in accordance with Clause 6.—Selective Voluntary Severance or Early Retirement of this Order, prior to the completion of the period of leave without pay.

(7) Involuntary Redundancy

Where suitable alternative employment is unable to be identified for an employee and the employee is unwilling to undergo training or retraining or accept a position outside that defined as suitable, the Government employer may as a last resort retrain the employee. An employee so retrained shall be entitled to the severance and other payments prescribed by Clause 6.—Selective Voluntary Severance or Early Retirement of this Order.

5.—INCOME MAINTENANCE

(1) Classification Maintenance

An employee placed in a new classification which carries a lower rate than the former classification, shall be paid a rate equivalent to the former classification for a total period of twelve (12) months from the date of transfer. Any adjustments or increments which would have occurred or are made to the former classification rate within the twelve (12) month period shall be applied and paid to the employee.

Progression through the increments will be subject to the normal tests applied under the employee's award classification.

(2) Wage and Salary Maintenance

- (a) Where, after a period of twelve (12) months an employee remains employed on a classification carrying a lower rate than the rate of their former classification, that employee shall continue to be paid the rate applicable to the former classification at the twelve (12) months' anniversary date and such rate shall continue to be paid until the rate applicable to the employee's current classification exceeds that rate.
- (b) For the purposes of subclause (1) of this clause and paragraph (a) of this subclause the total remuneration shall—

- (i) exclude all allowances which represent:

- (aa) an amount paid for overtime or as a bonus, or as an allowance instead of overtime;
- (bb) except as provided in placitum (ii) of this paragraph, a relieving allowance;
- (cc) an allowance for travelling, subsistence or other expenses;
- (dd) an amount paid for rent or as a residence, housing or quarters allowance;
- (ee) a climatic allowance or allowances for equipment or, a disability associated with the particular job eg site allowance;
- (ff) an amount paid as compensation in lieu of the opportunity for private practice.

- (ii) include allowances which represent—

- (aa) a relieving allowance that has been paid continuously for twelve (12) months;
- (bb) a shift allowance which is paid on a regular basis and would continue to be paid during periods of annual leave.

- (c) Where an employee elects to undertake training or retraining within a period of six (6) months from the date of being nominated as redundant, the employee shall continue to receive their former classification rate for the period of training or retraining, provided that period does not exceed twelve (12) months. The period of training or retraining shall not be counted in determining the duration of the employee's entitlements under subclause (1) of this clause and paragraph (a) of subclause (2) of this clause.
- (d) For tally or piece workers, the level of income at the date of redeployment referred to in subclause (1) of this clause shall be at the average weekly income, including all allowances and loadings of a

permanent nature, for the total number of weeks worked over the preceding twelve (12) months or part thereof.

6.—SELECTIVE VOLUNTARY SEVERANCE OR EARLY RETIREMENT

(1) Selective Voluntary Severance or Early Retirement

- (a) Each employee identified as being surplus to the employer's requirements and who cannot be found suitable alternative employment and who elects to resign shall be entitled to the benefits of this clause.
- (b) Employees electing to terminate their services in accordance with subclause (6) of Clause 4.—Redeployment and Retraining of this Order shall be entitled to the benefits of this clause.
- (c) Where an employee identified as surplus to requirements is able to carry out the duties and responsibilities in an equivalent manner to an employee not identified as surplus, the latter may, with the approval of the employer, elect to resign in place of the former, in which case the benefits of this clause shall apply to that employee.

Any dispute as to whether an employee not identified as surplus to requirements is able to carry out the duties and responsibilities in an equivalent manner to an employee identified as being surplus to requirements shall be determined by the Commission.

(2) Severance Pay

Each employee referred to in subclause (1) of this clause shall receive a severance payment from the employer in accordance with the following formula—

Two weeks pay for each completed year of continuous service provided that the maximum entitlement shall be 45 weeks salary.

Continuous service shall have the same meaning as that prescribed in the Wages Employees Long Service Leave General Order.

Payment will be at the rate of pay prescribed in subclause (1) of Clause 5.—Income Maintenance of this Order.

Payment for tally or piece workers will be based on the average weekly rate received for each week worked within the previous twelve (12) months.

(3) Payment for Leave Entitlements

In addition to the severance payments prescribed by this clause, employees shall also receive—

- (a) pro rata annual leave calculated in accordance with the relevant award or industrial agreement at the rate of income as provided in subclause (1) of Clause 5.—Income Maintenance of this Order.
- (b) pro rata long service leave calculated on each completed twelve (12) months of service at a rate of income as provided in subclause (1) of Clause 5.—Income Maintenance of this Order.

7.—TRANSITIONAL PROVISIONS

Parties to an award bound by this General Order who have entered into agreements or special arrangements which are not covered by this General Order or are in excess of the provisions of this General Order shall continue to abide by those agreements or special arrangements.

8.—RELOCATION EXPENSES

(1) Subject to subclause (2) of this clause an employee who accepts a position which requires the employee to be relocated will be reimbursed by the previous employer, all reasonable expenses incurred in moving the person's household belongings.

(2) Where an award or order prescribes an entitlement to the reimbursement of relocation expenses, the provisions of that award shall apply, in lieu of subclause (1) of this clause.

THAT this Order shall have effect on and from the 17th day of January, 1989.

DATED at Perth this 3rd day of February, 1989.

BY THE COMMISSION IN COURT SESSION

[L.S.] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

SCHEDULE A

EMPLOYEES TO WHOM THIS ORDER DOES NOT APPLY

- (1) Employees retired on grounds of ill health; or
- (2) Employees whose employment is terminated as a consequence of poor performance or misconduct on the part of the employee; or
- (3) An employee where an agreement has been reached between the employee, employer and relevant union that the employee is only engaged for a defined period under a fixed term contract at the conclusion of which their employment shall cease; or
- (4) Casual or seasonal employees—a "seasonal employee" means an employee who is hired to work for limited periods during a season.

SCHEDULE B

LIST OF AWARDS TO WHICH THIS ORDER APPLIES—

Aboriginal Police Aides Award; 31 of 1979
Government Officers Salaries, Allowances and Conditions Award 1989; PSA A3 of 1989
Police Award, 1965; 2 of 1966
Police Cadet's Award; 7 of 1976

INDUSTRIAL APPEAL COURT— Appeals against decision of Full Bench—

JURISDICTION: WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT

CORAM: FRANKLYN J (Presiding Judge)
ANDERSON J
SCOTT J

HEARD: 3 JUNE 1997

DELIVERED: 20 AUGUST 1997

FILE NO/S: APPEAL IAC 3 of 1997

BETWEEN: STATE GOVERNMENT INSURANCE
COMMISSION

Appellant

AND

TERENCE HURLEY JOHNSON
Respondent.

JUDGMENT—

FRANKLYN J (Presiding Judge)—

This matter was heard by a court comprised of myself, Anderson and Scott JJ. Scott J is unable to be present and I would ask Anderson J to publish his reasons firstly.

ANDERSON J—

I would allow the appeal, set aside the decision of the full bench and refer the matter back to the full bench with a direction that the question referred to be answered in the negative. I publish my reasons.

FRANKLYN J—

I agree with the reasons of Anderson J and also publish my reasons to the same effect.

Scott J has authorised me to publish his reasons which are also in agreement with those of Anderson J.

Catchwords—

Industrial law—Unfair dismissal—Public Service Appeal Board—Jurisdiction—Power to award compensation for loss caused by dismissal—*Industrial Relations Act 1979* (WA) ss80H, 80I, 80L

Representation—

Counsel—

Appellant: Mr P R Momber

Respondent: Mr P M Nisbet QC & Ms M C Davis

Solicitors—

Appellant: Jackson McDonald

Respondent: Community & Public Sector Union

Case(s) referred to in judgment(s)—

Nil

Case(s) also cited—

Bellamy v Chairman, Public Service Board (1986) 66 WAIG 1579

Pepler RRIA v Adste (1988) 68 WAIG 11

Re Caterham v Godstone [1904] AC 171

Robe River Iron Associates v Association of Drafting Supervisory and Technical Employees of Western Australia (1988) 68 WAIG 11

FRANKLYN J—

I am wholly in agreement with the reasons for decision in this appeal to be published by Anderson J.

The jurisdiction of the Public Service Board is that and only that conferred on it by the *Industrial Relations Act 1979* (“the Act”). Anderson J has set out the relevant provisions of s80I(1) which confers on the Board the “jurisdiction to hear and determine” the appeals identified in subparas (a) to (e) thereof and “to adjust all such matters as are referred to in paragraphs (a), (b), (c), (d) and (e)” (underlining added). No other section confers jurisdiction. Section 80L to which (*inter alia*) we were referred in argument does not confer additional jurisdiction. It provides that “subject to this Division” (Division 2 of Part IIA of the Act) certain provisions of the Act “shall apply with such modifications as are prescribed and such other modifications as may be necessary, to the exercise by a Board of its jurisdiction under the Act” (underlining added). It is clear therefrom that that section confers no jurisdiction but rather makes provision for the manner in which the jurisdiction conferred by s80I may be exercised, the powers which the Board may exercise in the exercise of that jurisdiction and the formal requirements to apply to its decisions and determinations. None of the powers thereby conferred expressly or implicitly authorises the making of an award of compensation.

I add that in my view the meaning of the word “adjust” used in s80I, as found by the majority of the Full Bench, is totally inappropriate to a decision on an appeal against a decision, determination or recommendation that “the Government officer be dismissed”. The meaning attributed by the majority is “to settle or bring to a satisfactory state”, that being a corruption of the dictionary meaning found by the majority to be the most apposite, viz “to settle or bring to a satisfactory state so that parties are agreed in the result”. It is thus not the dictionary definition and deprives it of the test of agreement necessary to “settle” or achieve a “satisfactory state”. It is difficult to conclude that a disputed award of compensation can be satisfactory to an employer or that refusal of compensation can be satisfactory to a dismissed employee. Nor does the definition logically permit the construction that the jurisdiction is conferred on the Board to determine what is a “satisfactory state”. A “satisfactory state” is an objective situation tested by its acceptance by those relevant to the issue who might otherwise be dissatisfied. It cannot reasonably be construed, on the definition applied, as equivalent to “the satisfaction of the Board”.

I too would allow the appeal, set aside the decision of the Full Bench and refer the matter back to it with a direction that the question referred to it be answered in the negative.

ANDERSON J—

The respondent was employed by the appellant as a manager and had been so employed for several years. On 18 August 1994 the appellant dismissed the respondent for misconduct. The respondent lodged an appeal to the Public Service Appeal Board claiming his dismissal was “harsh, unjust or unfair”. In his notice of appeal he sought “an order to be reinstated ... without loss of service or benefits”.

When the appeal came on for hearing the respondent amended his notice of appeal to seek only “a declaration of unfair dismissal and compensation, commensurate with his length of service and salary, in the amount of \$76,381”.

This raised the question of the jurisdiction (or power) of the Board to award compensation to a dismissed employee who did not seek to be reinstated. The question was argued as a preliminary issue and the Board decided it did have jurisdiction to hear and determine the claim for compensation. The appellant then requested the Board to refer to the Full Bench of the Industrial Relations Commission that same question which it formulated in the following terms—

“Does the Public Service Appeal Board have jurisdiction to award compensation in a claim of unlawful or unfair dismissal where there is no existing or prospective continuing relationship of employer and employee?”

This is a question of the proper construction of the legislation which confers on the Board such appellate powers as it does have. Obviously the Board has no jurisdiction or powers except those which it obtains under the relevant statute.

The Board is established and its functions and jurisdiction are set out in Part 11A of the *Industrial Relations Act 1979*. Section 80H provides, relevantly—

“80H (1) For the purposes of an appeal under s80I there shall be established, within and as part of the Commission [the Industrial Relations Commission], a Board to be known as the Public Service Appeal Board ...”

As to jurisdiction, s80I provides—

“80I. (1) Subject to section 52 of the *Public Sector Management Act 1994* and subsection (3) of this section, a Board has jurisdiction to hear and determine—

...

- (e) an appeal ... by any Government officer ... from a decision, determination or recommendation of the employer of that Government officer that the Government officer be dismissed,

and to adjust all such matters as are referred to in paragraphs (a), (b), (c), (d) and (e).”

Neither s52 of the *Public Sector Management Act 1994*, which refers to chief executive officers, nor sub-s(3) of s80I, which refers to appeals from decisions to do with redeployment and redundancy, has any application. None of the paras (a), (b), (c) or (d) has any relevance. Thus if the Board has the jurisdiction or power to hear and determine a claim for compensation by a dismissed government employee that jurisdiction or power must be found within s80I(1)(e) and specifically within the power “to adjust all such matters as are referred to in” para (e).

The word “adjust” has various applications in common parlance and in any given case it obtains its precise meaning or sense from the context in which it is used. In this legislation, the context is provided by each of the paragraphs (a) to (e) of s80I(1) and in the case under consideration the context is provided by para (e). The only “matter” which is referred to in that paragraph is “a decision, determination or recommendation ... that the Government officer be dismissed”. It is that, and only that, which may be “adjusted” in the exercise of this particular aspect of the Board’s jurisdiction. The power to “adjust” a decision or determination can only be a power to reform the decision in some way. In the case of a decision or determination by an employer to dismiss an employee with one month’s pay in lieu of notice, the most obvious way to do that would be to reverse it. Whether there may be other ways of adjusting such a decision is perhaps an open question. It may be arguable that the power to adjust a decision of dismissal includes a power to adjust the period of notice. The issue does not arise in this case because no such adjustment was sought by the

respondent. He made no claim to reform the decision in that way, that is, by altering the period of notice. He made only a claim for monetary compensation on the ground that the decision of dismissal itself was unfair. Hence, the Board was not asked to change the decision in any way. To give compensation to a dismissed employee is perhaps to change and thus to adjust the rights and obligations flowing from the decision to dismiss, or to super-add a consequence to the decision to dismiss, but it is not to adjust the decision to dismiss.

Senior counsel for the respondent, Mr Nisbett QC, submitted that there can be discerned from the legislation as a whole an intention that the powers of the Board in respect to unfair dismissals are to be the same *mutatis mutandis* as the powers of the Commission. I cannot accept this submission. The powers of the Commission are conferred by s23A and, by sub-s(1)(ba), expressly include a power to award compensation for loss or injury caused by the dismissal, limited to six months' remuneration. Section 80I is quite specific in its conferral of jurisdiction on the Board and s80I is quite specific in its statement as to which sections of the Act apply to the Board in the exercise of its jurisdiction. Section 23A is not one of those sections. There is nothing elsewhere in the Act or arising out of its history which enables the conclusion to be reached as a matter of construction that Parliament intended that the Board should have the same power. As I have tried to explain, it is not a conclusion that can be reached simply by adopting an expansive approach to the notion of adjusting a decision or determination of dismissal.

I would allow the appeal, set aside the decision of the Full Bench and refer the matter back to the Full Bench with a direction that the question referred to it be answered in the negative.

SCOTT J—

I have had the opportunity of reading the draft reasons to be published by Anderson J in this matter. I agree both with his Honour's reasons and with the conclusion that he ultimately reaches.

The Public Service Appeal Board is established under Part IIA of the *Industrial Relations Act 1979* and its functions in relations to appeals are governed by s80I. That section relevantly provides, for the purposes of this appeal—

“(1) Subject to section 52 of the *Public Sector Management Act 1994* and subsection (3) of this section, a Board has jurisdiction to hear and determine—

...

- (e) an appeal, other than an appeal under section 78(1) of the *Public Sector Management Act 1994*, by any Government officer who occupies a position that carries a salary lower than the prescribed salary from a decision, determination or recommendation of the employer of that Government officer that the Government officer be dismissed,

and to adjust all such matters referred to in paragraphs ... (e).”

The argument in this case turns on the meaning of the word “adjust” in para 80I. The Full Bench of the Industrial Relations Commission in its reasons for determination of 7 March 1997 (No PSAB 16 of 1994) held that the word “adjust” was a word of wide import. The learned President said at 22—

“I would also add that the specific word ‘adjust’, connoting a power to do what is necessary to be done, also leads one to the conclusion that the legislature contemplated taking any necessary steps to resolve a matter. That that is so is corroborated by the meaning ‘adjust’ as defined in the *MacQuarrie Dictionary* 2nd Edition most appositely to mean—

‘to settle or bring to a satisfactory state, so that parties are agreed in the result.’”

The Full Bench therefore held that the word “adjust” in s80I was a word of sufficiently wide import to enable the Public Service Appeal Board to assess compensation for wrongful dismissal.

For the reasons advanced by Anderson J, in my opinion, the word “adjust” in s80I is not a word of wide import in the context of the section. The meaning to be given to the word “adjust”

must be construed in the light of the totality of s80I and particularly in the context of the jurisdiction granted by that section under the various subheadings (a) to (e) which grant to the Board its powers and jurisdiction. In my opinion, the word “adjust” must be read *ejusdem generis* so that its meaning must be referable to the jurisdictional powers contained within each of those subsections where relevant. In my view it cannot be said that the addition of that word at the end of the section, of itself, creates a head of jurisdiction otherwise not contained within the subparagraphs.

As Anderson J in his judgment explains, there are circumstances in which appropriate adjustments can be made within the context of s80I as ancillary to the exercise of the powers under that section. In my view, it is quite inappropriate to construe the word “adjust” in such a manner as to grant to the Board jurisdiction to award compensation in the circumstances of this case as contended for by counsel for the respondent.

I would also allow the appeal and set aside the decision of the Full Bench.

WESTERN AUSTRALIAN INDUSTRIAL APPEAL
COURT

Industrial Relations Act 1979.

Appeal No. IAC 3 of 1997

IN THE MATTER OF an appeal against the decision of The Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered PSAB 16 of 1994 dated the 7th day of March 1997.

BETWEEN

State Government Insurance Commission
Appellants

and

Terence Hurley Johnson
Respondent.

BEFORE—

JUSTICE FRANKLYN (PRESIDING JUDGE)
JUSTICE ANDERSON
JUSTICE SCOTT.

20 August 1997.

Order.

HAVING heard Mr P Momber, (of Counsel) for the Appellant, and Mr P M Nisbett QC and Ms M Davis (of Counsel) for the Respondent, THE COURT HEREBY ORDERS THAT—

1. The appeal be upheld;
2. The decision of the Full Bench be set aside; and
3. The matter numbered PSAB 16 of 1994 be referred back to the Full Bench with a direction that the question therein be answered in the negative.

(Sgd.) J. A. SPURLING,

Clerk of the Court.

[L.S.]

FULL BENCH— Appeals against decision of Commission—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr David James Kenny
(Appellant)

and

Elmerside Pty Ltd ACN 057 042 583
T/A The Hotel Alexander
(Respondent).

No. 872 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER P E SCOTT.

3 September 1997.

Reasons for Decision.

THE PRESIDENT: This is an appeal by the appellant against the decision of the Commission at first instance to dismiss an application brought under s.29 of the Industrial Relations Act 1979 (as amended) alleging that he was unfairly dismissed from his employment by the respondent on 13 November 1996.

By that application, the applicant claimed reinstatement, and, in the alternative, monetary compensation and two weeks wages alleged to be due in lieu of notice.

It is that decision which is now appealed against on the following grounds (see pages 2-5 of the appeal book (hereinafter referred to as "AB"))—

“GROUND 1: CONSTRUCTIVE DISMISSAL.

1. The Learned Commissioner has either erred in law, or failed to take sufficient weight, on well established principles in law relating to the constructive dismissal in both the State and Federal Jurisdictions.
2. Based upon the evidence before the Commission, the Learned Commissioner failed to apply the list of “termination at the initiative of the employer”, especially in relation to—
 - 2.1. The learned Commissioner’s ruling that the Applicant accepted the unilateral variation of his contract of employment in respect to working as a Bar Person (page 2, Reasons for Decision).
 - 2.2. The Learned Commissioner placed very little or no weight upon the change of duties from Trainee Manager to Duty Manager, prior to changing of management at the Hotel.
 - 2.3. The Learned Commissioner placed very little weight on the contents of Exhibit K4, dated 9 June 1996, in which the Applicant was concerned over his change of duties, and requested a job description (Refer to pp. 3 & 13 of Transcript).
 - 2.4. The learned Commissioner failed to take into consideration the evidence given under cross-examination in respect to the circumstances of the “Bar Position”, which under cross-examination, the Applicant said it:—
 - a) involved different duties (p.11 of Transcript)
 - b) he had no choice over the matter (p. 11-12 of Transcript);
 - c) change of benefits in the original vague contract (p. 12 of Transcript, Exhibit K3).
 - d) he was given no choice but to accept the Bar Person position or to “resign” (pp. 5, 13, 14 of the Transcript).

- e) a casual bar person was brought in to replace the Applicant when he was sick (p. 38). A casual bar person cannot perform a Duty Manager’s position.
- f) exhibit K7 “Minutes of Meeting” confirm that the Applicant has to accept a bar position or resign.
- g) The employer abused the warning letter system (Exhibit K5) as a method of terminating the employee in due course. This contravenes case law in—
 - i) *Mohebatullah Mohazab v. Dick Smith Electronics Pty Ltd*, 28 November 1995, Full Court of the Industrial Relations Court, No. 12571/95, 62 IR 200-207.
 - ii) *Melissa Jaye Jaggard v. The Court Hotel* (1996), 76 WAIG 4720 ff.
 - iii) *John Joseph Moreno v. Serco Australia Pty Ltd* (1996), 76 WAIG 2855.
- h) The learned Commissioner placed very little weight on the role of Mr Toy, the Assistant Manager, who essentially constructively dismissed the Applicant, by placing him in a position where he had no option but to either accept the new position, or resign. Refer Exhibits K5, K6, and K7.

GROUND 2: EQUITY, GOOD CONSCIENCE AND SUBSTANTIAL MERITS OF THE CASE.

1. The Learned Commissioner in accepting the evidence of Mr G.L. Harris, has not correctly applied the principle of S26(1)(b) of the Industrial Relations Act, 1979, in respect to this evidence.
2. Although the Commissioner is not bound by any rules and laws of evidence, it may inform itself in such a way as it thinks fit. Refer to *RE Tramway Employees (Melbourne) Award* (1945), 72 CAR 26 at 27, where the Full Bench of the then Conciliation and Arbitration Court said—

“Although the Court is not bound by the rules of evidence, this has never been held to mean that the Court would act without evidence. If a Tribunal were to so act, obvious injustices could result.”
3. There is no evidence before the Commission to demonstrate that Mr Harris was present at the meeting of the 4 November 1996 (Exhibit K7), and so accordingly, his evidence would be classified as hearsay (sic) and should not have much weight attributed to it.
4. Neither Mr Toy or Ms Beverley Carragher were present in the original hearing before the Commissioner.
5. The Learned Commissioner erred in respect to applying the principles of S26(1)(b) of the Act, when on p. 30 of the Transcript, the Commissioner upheld an objection by Counsel for the Respondent, for Correspondence marked MF1 for this purpose of the Appeal, to be admitted as evidence.
6. The Learned Commissioner has failed to apply a “Fair Go Around” principle, as outlined in a decision of His Honour Judge Wilcox CJ, in *Nicholson v. Heaven and Earth Art Gallery Pty Ltd*, 20 November 1994, in Sydney, 126 ALR 233.

REASONS WHY IT IS IN THE PUBLIC’S INTEREST TO BE HEARD—

1. This appeal attempts to address well established principles in law in respect to constructive dismissal and the principles of acquiescence (sic).
2. The Full Bench to consider the authorities in respect to S26 of the Act to determine whether the Learned Commissioner has properly applied the principles of equity, good conscience, and substantial merits of

the case, in respect to the principal witness of the Respondent, based upon secondary sources of evidence.

3. That the matter ought to be given further consideration, by either the Commission or the appellant jurisdiction.

RELIEF SOUGHT—

The Appellant seeks the Full Bench to issue the following Orders:—

1. That the Order of the Commission dated 16th April 1997 for matter no. 1723/96, be quashed.
2. That the following Orders be substituted in lieu:—
 - 2.1 That the Appellant Mr David James Kenny was unfairly dismissed by the Respondent as a Duty Manager, on or about the 4th November 1996,
 - 2.2 That the Appellant be reinstated to his former position in the Hotel within seven (7) days of issuing of this Order, with no loss of benefits or entitlements;
 - 2.3 That the matter be remitted back to the Commissioner in respect to ascertaining of compensation pursuant to S23A of the Act.”

BACKGROUND

The appellant, Mr David James Kenny, commenced employment in the capacity described as “trainee assistant manager” on 25 July 1995. His letter of appointment (see pages 20-21 (AB)) prescribes that his “responsibilities and duties will be as directed by the Hotel Manager, William Kalender to whom you will be ultimately responsible to for the satisfactory performance of your duties”.

Thereafter, the appellant worked in various management positions which were designated “manager” or “supervisor”.

Manager is, in the respondent’s business, a higher position than that of supervisor.

At all material times, the respondent employer carried on the business of “The Hotel Alexander” at 164 Alexander Drive, Dianella, which is where the appellant worked.

For several months prior to 4 November 1996, the appellant occupied the position of “banquet coordinator”, a supervisor position, and, in addition, served as “duty manager” when rostered to do so on several occasions during the period. His duties also included relief management work in various departments, including the bottle shop, bar and brasserie. On several occasions, he did “solo” duty management (see exhibit K2).

The appellant was of the opinion that he had gone beyond the status of trainee and was a manager. This was not, however, the view, in evidence, of the general manager, Mr Graham Lindsay Harris. The Commission at first instance accepted Mr Harris’ evidence and found accordingly.

On 23 August 1996, the appellant was the recipient of a formal reprimand letter from Mr Mark Toy, the assistant general manager of the respondent. In that letter, a number of complaints about his conduct were made (see pages 31-32 (AB)). This letter was responded to by the appellant by letter dated 24 August 1996 (see page 33 (AB)). This, according to the appellant’s evidence, related to his leaving work to go home and feed his dog.

I should add, too, that by letter dated 16 February 1996 from Mr Harris to the appellant, the appellant was commended for his overall attitude and commitment to duty.

On 3 November 1996, the appellant was, according to his evidence, absent from work ill.

On 4 November 1996, a meeting occurred at 12.00 noon at the hotel between the appellant and Mr Toy. The meeting took place in order to discuss dissatisfaction by Mr Toy with the appellant’s conduct. A Ms Beverley Carragher was present also. “Minutes” of the meeting appear at pages 34-36 (AB). The minutes record that Mr Toy and Mr Harris were not satisfied with the appellant’s attitude, and “as a result the position of Trainee Assistant Manager included working in the public bar”. At that meeting, the appellant was given two options—

- “1. Either take on the position of full time bar person, in the front bar of the hotel or

2. Resign forthwith from his position, he will be paid his two weeks notice and be given a certificate of recognition of his 12 months traineeship at The Hotel Alexander.”

He was then, according to the minutes, told to make a decision and let Mr Toy know at the end of the day. The appellant objected to what was proposed.

The appellant was not happy with the outcome of this decision and went to Mr Harris.

There was later a discussion between the appellant and Mr Harris. Mr Harris advised him that he would not be paid less and that he would have a supervisory role. Further, the position in the bar was not paid at a lesser rate than the rate at which he was being paid, and was, according to Mr Harris, a similar position to the banquet coordinator position, namely a supervisor position. The appellant did not see his position as similar to the banquet supervisor position. However, he did agree that Mr Harris said that he was being given the responsibility of looking after the bar.

Mr Harris’ evidence was that because the appellant was a trainee manager and one of the full-timers had left it was thought that the bar position needed more supervision, somebody with strength and management, to go in there and represent the hotel (see page 61 (AB)).

The evidence was that the appellant then accepted the position.

The evidence from Mr Harris was that the relative authority of a banquet supervisor compared to a bar supervisor was similar, they being responsible for the working staff of the department. Mr Harris’ evidence was that he had enough faith in the appellant to offer him that position. Mr Harris’ evidence was that the appellant accepted the duties and was not demoted but transferred. Mr Harris said that had he wanted to demote the appellant he would have moved him to a full-time barperson’s “job” and paid him at that rate. The appellant’s pay and conditions did not change.

The appellant thought about Mr Harris’ proposition.

The appellant then performed that work for at least one day because he said that he had no other work to go to at the time.

On 11 November 1996, the appellant gave two weeks notice of termination of his employment by resignation. This notice was to take effect two weeks from 11 November 1996.

On 12 November 1996, the appellant contacted the respondent’s duty manager, Mr Richard Theo Coster, who also gave evidence. The appellant advised that he would not be attending to perform the bar work for which he was rostered that day. There was a difference in evidence between Mr Coster’s evidence and that of the appellant as to whether the appellant said that he would be working for a new employer or that he was being interviewed by a prospective new employer. The Commission at first instance made no finding in that regard. Mr Coster said in evidence that he warned the appellant that he was jeopardising his employment.

The next day, 13 November 1996, the appellant attended the hotel in order to perform his duties. However, the respondent, believing that the appellant had commenced other employment on 12 November 1996, and therefore believing that he had ceased his employment with the respondent, had appointed another employee to work in the bar in the appellant’s place on that day. The Commission held that if it were the fact that the appellant had undertaken alternative employment when absent then his attending to perform his duties on 13 November 1996 provided a clear indication that he had not completely abandoned his employment with the respondent.

The appellant, the Commission at first instance also found, had absented himself from work as though it was his right to do so. In that, the Commission held, the appellant was in breach of his duty to the respondent as his employer, but that did not of itself bring the contract of employment to an end as at 12 November 1996. The Commission did find that the failure to attend work provided a cause for the respondent’s management to dismiss the appellant. However, the respondent did not do so. What the respondent did do, the Commission found, was not to allow the appellant to resume his duties on 13 November 1996, notwithstanding that the appellant had reported at work ready, willing and able to work the remainder of his notice period. The Commission held that that constituted a

repudiation of the appellant's contract and a dismissal "with immediate effect" of the respondent.

The Commission held, however, that in the light of the deliberate absence of the appellant without dismissal, it was not unfair.

The Commission also found that even had there been unfairness he would have been satisfied that the contract of employment being about to end shortly through resignation, and the appellant not having conducted himself as a faithful and diligent employee, as he ought to have done, the degree of unfairness was so slight as not to warrant his reinstatement or the award of an amount of compensation.

There is some question in this matter as to whether the change in duties which the appellant accepted constituted a termination of his contract of employment with a new contract supplanting the old, or, alternatively, whether it amounted to a termination of the contract of employment. Where an employer and employee agree to an alteration in the employee's duties and responsibilities which is performed, a court should be more ready to hold (unless the original contract of employment provided for the contingency) that a new contract has replaced the old, or at least that the old contract as varied contains terms objectively appropriate to the new relationship created.

In this case, the appellant was, in the end, following his discussions with Mr Harris, not placed in a situation where the change to his situation was exceptional, far-reaching, not within the original contemplation of the parties, and not comprehended by the contract initially made between them. That is what the Commission at first instance found, and, on the evidence, having regard to the fact that the Commission seems to have preferred the evidence of Mr Harris, it was open to the Commission to so find. Thus, the change in the appellant's situation did not give rise to a new contract replacing the old contract rather than merely a variation of the old contract. In fact, it might have been held, as the Commission held, that the duties were duties within the scope of his occupation as a trainee manager, particularly having regard to the fact that his remuneration did not change and his duties were those of a supervisor. Accordingly, it was open to find that there was merely a variation in duties within the scope of his contract, as the Commission found (see Quinn v Jack Chia (Australia) Ltd [1992] 1 VR 567 (SC) per Ashley J and see also Brackenridge v Toyota Motor Corporation Australia Ltd 142 ALR 99 (FC)).

If it were a termination into which the appellant was forced that is by way of resignation by being offered a demotion with the alternative for resignation, then the appellant would quite properly be found to have been pushed and not to have jumped. Obviously, there would then be a dismissal, unless the contract provided for demotion impliedly or expressly (see Mohazab v Dick Smith Electronics Pty Ltd (No 2) (1995) 62 IR 200 (FC)).

Depending on the circumstances, however, a demotion which is not expressly or impliedly authorised by a contract of employment may constitute a dismissal. It was not seriously contended at first instance, nor before us, that there was an implied term giving the respondent the power to demote. In any event, the question of the act of the employer in directing the appellant to different duties may well have been justified as a result of the appellant's conduct. That issue does not seem to have been decided.

What occurred, in any event, was that the appellant, having accepted his "transfer", gave notice of resignation. He then did not attend for work on one day during the period of the notice, having been warned prior to his non-attendance that if he did not attend, his employment might be in jeopardy. When he did arrive the next day, as I have said, he was, in fact, dismissed, his job already having been given to another employee.

The respondent, as the Commission at first instance found, did not allow the appellant to resume his duties, there being no position then in existence in which he might work. It is clear that at that time his employment was terminated. I am not disposed to say that the dismissal, as a summary dismissal, was unjustified, given the appellant's failure to attend work on 12 November 1996 after a warning. However, I agree with the Commission that even if it were not a summary dismissal as a matter of law, then given the unauthorised absence of the appellant, the dismissal was not established to be unfair. In any event, I agree with the Commission that the appellant's

contract was almost at an end, and, in all of the circumstances of the case, given the relationship between the parties, was not unfair and did not breach the principle of "a fair go all round".

It was for the appellant to establish that the dismissal was unfair, and it was open to the Commission at first instance, on the evidence, and as a matter of law, to find as he did that it had not been established that it was unfair.

I should also say that, applying Devries and Another v Australian National Railways Commission and Another [1992-1993] 177 CLR 472 (HC), insofar as the Commission made findings based on his impression of witnesses in the witness box, there is nothing in the submissions or the evidence which would persuade me that the Commission misused its advantage or otherwise erred in terms of the principle expressed in Devries and Another v Australian National Railways Commission and Another (op cit) (HC).

There does not seem to have been before the Full Bench a clear challenge to the decision not to order the payment of two weeks wages in lieu of notice. In any event, since, in the contract, there was no provision requiring that wages be paid in lieu of the required notice, if notice were not given, it was open to the Commission at first instance to find that the appellant was not claiming a benefit due under his contract of employment.

This was a discretionary decision as that is defined in Norbis v Norbis 65 ALR 12 (HC), and the principles applied by this Commission and by the Industrial Appeal Court in a large number of cases which are expressed, inter alia, in House v The King [1936] 55 CLR 499 (HC) apply.

I have considered all of the evidence and the submissions and authorities. It has not been established to my satisfaction that the Commission's discretion miscarried or that the Commission erred in law or in any other way as alleged in the grounds of appeal which would justify the Full Bench interfering or deciding that the Commission had erred. I would dismiss the appeal.

CHIEF COMMISSIONER COLEMAN: I have had the benefit of reading the draft of the Hon President's reasons for decision. I agree with those reasons and with the order proposed.

COMMISSIONER SCOTT: I have read the reasons for decision of His Honour the President. I agree with those reasons and have nothing to add.

THE PRESIDENT: For those reasons, the appeal is dismissed.

Appearances: Mr T C Crossley, as agent, on behalf of the appellant.

Mr M E Herron (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr David James Kenny
(Appellant)

and

Elmerside Pty Ltd ACN 057 042 583
T/A The Hotel Alexander
(Respondent).

No. 872 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER P E SCOTT.

3 September 1997.

Order.

THIS matter having come on for hearing before the Full Bench on the 5th day of August 1997, and having heard Mr T C Crossley, as agent, on behalf of the appellant and Mr M E Herron (of Counsel), by leave, on behalf of the respondent,

and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 3rd day of September 1997 wherein it was found that the appeal should be dismissed, it is this day, the 3rd day of September 1997, ordered that appeal No 872 of 1997 be and is hereby dismissed.

By the Full Bench
(Sgd.) P.J. SHARKEY,
President.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leslie George Magyar
(Appellant)

and

Ursula Frayne Catholic College
(Respondent).

No. 610 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER P E SCOTT.

4 September 1997.

Reasons for Decision.

Introduction.

THE PRESIDENT: This is an appeal brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") against the decision of the Commission, constituted by a single Commissioner, whereby on 7 March 1997, in application No 1746 of 1996, the Commissioner dismissed the application of the appellant (then the applicant) whereby he alleged that he was unfairly dismissed and sought reinstatement.

The appellant now appeals against that decision on the following amended grounds—

"The grounds for appeal are—

1. The Commissioner should have taken into account breaches of the principles and steps 2 to 9 of the Catholic Education Commission policy document of the Respondent in relation to the procedure for termination of staff.
2. The Commissioner failed to take into account breaches of the "Summative Appraisal" process as stipulated in the Independent School Teachers Award 1976, in particular sections of (2)(b) as stated in Appendix 1 of the Award.
3. The Commissioner wrongly placed reliance on the Secondary Education Authority reports prepared by the Secondary Education Authority at the request of the Respondent when the Applicant was given no opportunity to respond to any criticisms when the Secondary Education Authority report was likely to affect the Applicant in the course of his employment.
4. That the Commissioner failed to take into account the written requests of the Applicant to Mrs Parker of the Respondent to provide further and better particulars of alleged misconduct, performance deficiencies and the summative appraisal.
5. The Commissioner has failed to take into account the different teaching duties in relation to the Applicant as opposed to other teachers in his findings in relation to the Applicant and his standard of teaching.
6. That the Commissioner erred in finding that the documentation for his teaching was grossly inadequate.
7. The Commissioner wrongly placed reliance on evidence from Mrs Parker and other staff in relation in

relation (sic) to student/computer ratios and the level of computer malfunctions.

8. The Commissioner failed to take into account written requests by the Applicant to Mrs Parker of the Respondent in relation to sufficient resources so that the Applicant could perform his duties to an acceptable standard.
9. The Commissioner wrongly placed reliance on evidence from Mr Hailes and Mrs Lainio in relation to communication methods of the Applicant.
10. The Commissioner wrongly placed reliance on the role of undocumented "discussions" whereas the Catholic Education Commission policy document of the Respondent and the Independent School Teachers Award 1976 require that such matters be clearly documented and copies of such be provided to the Applicant.
11. The Commissioner has failed to take into account evidence of teamwork, collegiality and cooperation.
12. The Commissioner has failed to take into account the refusal of the Director of Catholic Education Office to meet with the Applicant prior to termination to discuss serious breaches of Catholic Education Commission policy.
13. The Commissioner failed to take into account the lack of specific details and the absence of written warnings in regard to the alleged failure to follow directives of management.
14. The Commissioner failed to take into account breaches of the summative appraisal process as stipulated in the letter 18th March 1996.
15. The Commissioner failed to take into account the impact of "problem" students on the Yr 12 Applied Computing classes.
16. The Commissioner wrongly placed reliance on evidence from Mrs Parker which relied on reports from Mrs Johnson when Mrs Johnson was not called to give evidence.
17. The appellant contends that much of the evidence presented by the respondent's witnesses was inconsistent, unsubstantiated and vague to the point that the credibility of their evidence is highly questionable.
18. The appellant contends that the employer conducted themselves in a manner which destroyed or seriously damaged the relationship of trust and confidence between employer and employee.

...

RELIEF SOUGHT

The Applicant seeks reinstatement, and damages."

There was a statement of public interest in the grounds of appeal. However, the statement is unnecessary, since the decision appealed against was not a "finding" as that is defined in s.7 of the Act.

PRELIMINARY MATTERS

At the commencement of the hearing of the appeal, the appellant sought to have admitted evidence, which had not been adduced at the hearing at first instance. This evidence consisted of documents based on a letter from the Parliamentary Commissioner (hereinafter referred to as "the Ombudsman"). Further, the appellant sought, as I understand it, leave to adduce evidence by further cross-examination of certain witnesses arising from the contents of the Ombudsman's letter.

The Ombudsman's letter was received by the appellant at the conclusion of evidence and approximately two days before the decision in this matter was handed down. The decision was handed down and the final order made by the Commissioner on 7 March 1997. It seems to have been conceded that the letter itself was dated 4 March 1997. The Ombudsman's letter referred, according to the appellant, to the evidence of witnesses from the SEA, Dr Michael Theo Partis and Ms Valerie Jane Gould, and also of Ms Anne Parker. The appellant advised that he wished to cross-examine those persons. His wish to do so arises from the contents of the Ombudsman's letter.

It was submitted by Mr Bartlett (of Counsel) on behalf of the respondent that this evidence should have been sought to have been adduced before the decision was handed down.

The appellant submitted that the documents to which he referred undermine the evidence for the respondent of the witnesses to whom I have referred.

No application was made to the Commissioner to seek to adduce evidence, to re-open the appellant's case, or to seek to have those witnesses recalled to be further cross-examined. The matter was, however, apparently discussed, according to what the appellant told us, with his advocate. As a result, no application was made.

Because of s.23A of the Parliamentary Commissioner Act 1971 (as amended), it was conceded that it was not possible to reveal to us the contents of the Ombudsman's letter. The respondent opposed the application on the basis of s.49(4) of the Act and *FCU v George Moss Ltd 70 WAIG 3040 (FB)*. It was submitted that the evidence was ascertainable by diligent inquiry before the hearing.

The appellant submitted that the letter was of sufficient relevance to have materially affected the decision because it undermined the evidence given by the key witnesses for the respondent. This evidence would go, it would seem, to the procedure used in compiling the SEA report. Further, it was submitted that the new evidence was such as to make it probable that the case would succeed. It was not submitted that the evidence was material; and it was not newly discovered, as I understood the submissions.

Insofar as this was an application to amend the grounds of appeal, although it was not expressed to be, it fails.

S.49(4) of the Act (and see *FCU v George Moss Ltd* (op cit) (FB)) prevents it because these matters were not raised at the hearing at first instance. Plainly they could have and should have. There should have been an application to recall witnesses and an application to re-open the appellant's case at first instance, if there was substance in such an application. A decision was taken not to, although there was time.

Further, I was not persuaded that there was new evidence justifying the appeal ground being amended or this application being otherwise acceded to.

Further, I was not satisfied that a different result would be reached on the evidence as it was outlined or that the evidence was not available (see *Orr v Holmes and Another [1948] 76 CLR 632 at 641-643 (HC)*). In other words, nothing was put which would enable me to say that s.49(4) of the Act did not prevent the application succeeding (see *FCU v George Moss Ltd* (op cit) (FB)).

Further, insofar as this was not an application to add a ground enabling a "re-trial" on fresh evidence, the application failed as not having been made at first instance when it could and should have been made. S.49(4) of the Act prohibits the Full Bench entertaining the matter further.

In any event, s.49(4) does not enable such a decision. Such a decision would, in addition, not be in accordance with the equity, good conscience and substantial merits of the case, given that there was ample opportunity for the matter to be raised at first instance and given that it is not clear what effect the evidence sought to be adduced would have on the decision.

The appellant also sought to amend the grounds of appeal to add a new ground 16. That ground was that the appellant was denied information which, if made available to the appellant, would have allowed him to undermine or call into question the credibility of some of the evidence of key witnesses for the respondent. Insofar as I was able to understand this submission, it related to documents which might have been adduced through or put to Ms Shirley Johnson, who was not called to give evidence. Indeed, Ms Johnson's evidence was sought to be adduced by the respondent at first instance on affidavit and was not admitted into evidence by the Commissioner. The appellant did not, at first instance, seek to have her called to be cross-examined, apply to adjourn to adduce the documents in any other way, or direct a summons to witness to Ms Johnson to appear. The appellant could and should have done so but did not.

As far as any inadequacy in discovery is concerned, that should have been sought to have been remedied at first instance and was not. Under s.49(4) of the Act, and, indeed,

under s.26 and s.27 of the Act, it would be wrong to allow the appellant to add the ground 16 which he sought to add.

The appellant sought further to add a different ground 16 and new grounds 17 and 18. These seemed to me to adequately reflect the way that the argument should proceed and their addition, in our judgment, caused no detriment to the respondent. The Full Bench therefore permitted those amendments.

BACKGROUND

The appellant was, at all material times, a teacher employed at Ursula Frayne Catholic College (hereinafter referred to as "UFCC"), a Catholic secondary school, situated in Victoria Park in the State of Western Australia.

In fact, the appellant was employed by UFCC as a full-time teacher teaching computing subjects from January 1990 until his dismissal on 5 November 1996. He was a teacher of 10 years experience. His employment was covered by an award of this Commission, the Independent Schools' Teachers' Award 1976, No R 27 of 1976 (hereinafter referred to as "the award").

The appellant was dismissed following a process called a summative appraisal, which was conducted by three appraisers, Ms Shirley Johnson, Mr Ian Francis Hailes and Mr Stuart Douglas Palmer, all teachers at UFCC.

This process consisted of two appraisal processes carried out between June and September 1996. After that, and because of the outcomes, the principal of UFCC asked for a visit by an officer of the Secondary Education Authority (hereinafter referred to as "the SEA"), who reported on her findings concerning the year 12 Applied Computing course taught by the appellant.

By letter dated 16 October 1996 (see page 75 of the appeal book (hereinafter referred to as "AB")), which I reproduce hereunder, formal parts omitted, the principal advised as follows—

"The summative appraisal has now been completed and after considering the appraisals and your response it is apparent that the findings are adverse.

The following areas were identified as concerns during the appraisal and you were advised accordingly on the 22nd of August 1996—

- 1) Remaining in class
- 2) Students remaining in class
- 3) Computer games
- 4) Assessment Records, Programmes, Tests, Examinations, Daily/Weekly Record of Work
- 5) Following Programs
- 6) Extension Work
- 7) Team Work

You have been given the opportunity to address these concerns but have not done so. The major issues are—

- 1) Failure to follow instructions given by the principal and curriculum coordinator.
- 2) Despite advice given assessment documentation is inadequate.
- 3) You have not followed agreed programme and course outlines thus disadvantaging the students.

Your continued employment at Ursula Frayne College is now to be reviewed. Before a final decision is made, I wish to extend to you the opportunity to make a final comment regarding your future employment at the College. Once I have received your comments I will then consider them and let you know the outcome."

When the appellant's employment was terminated, he was paid six weeks salary in lieu of notice. The letter giving notice of dismissal (see page 79 (AB)) reads, formal parts omitted, as follows—

"I refer to my letter of 16 October, 1996 advising you that the outcome of your summative appraisal was found to be adverse. As a result of these findings you were advised that your contract of employment at Ursula Frayne College was to be reviewed and you were provided with the opportunity to make final comment regarding your future employment at the College.

Your comments were received on 30 October, 1996 and I have had the opportunity to consider them along with all

other information, including the findings resulting from your summative appraisal and recent reports from the SEA moderator.

The summative appraisal process highlighted areas of concern that had previously been discussed with you by Mrs Shirley Johnson and myself. I believe that the College has provided you with every opportunity to achieve the desired level of performance, however the final assessment has shown that you have failed to do so. The adverse findings of the summative appraisal were conveyed to you in my letter of 16 October, 1996.

Some of the College's concerns that were raised within the summative appraisal process were reaffirmed by the SEA moderators report, which was also found to be adverse.

It has been with a great deal of thought that I have considered your future employment at Ursula Frayne College. Consideration has been given to both yourself as a teacher and a staff member and the responsibilities that the College has towards the students.

With this in mind I believe that you are advised that your contract of employment at Ursula Frayne College is to be terminated as of the date of this letter with six weeks notice. You will not be required to work out the notice period and payment for this period and any other outstanding monies will be forwarded to you as soon as possible."

I have already referred to the summative appraisal process and will refer to that in more detail later in this background. The summative appraisal (a word which I cannot find in either the Oxford or Macquarie Dictionaries) is, as I understood it, intended to be something of a major appraisal of a teacher's performance. It was the appellant's case that the summative appraisal process was required to be conducted under the award and in accordance with Appendix 1, and that the employer failed to follow the summative appraisal process required to be followed under Appendix 1.

Further, it was the appellant's case that the respondent failed to observe its own internal rules which were required to be followed by the employer seeking to dismiss an employee. These rules were set out in a policy statement by the Catholic Education Commission, which, as I infer, has overall responsibility for Catholic schools in this State.

The summative appraisal is referred to in the Schedule to the award and requires that a number of things be done (see pages 41 and 41-2 (AB)). I will refer to that process hereinafter.

The Catholic Education Commission of Western Australia's Policy Statement, which it was common ground applied, sets out a number of principles and procedures (see pages 41-3, 41-4 and 41-5 (AB)). It permits termination for "Incompetency or Misconduct". I will refer to that later in detail, but some relevant provisions I reproduce hereunder.

Under the heading "Principles", clause 4 defines "incompetency" in the following terms—

"4. Incompetency is generally defined and established by an inability, or a refusal, to undertake all tasks, functions and duties appropriate to the position occupied, including but not limited to the following—

- to promote the mission statement of the school;
- to communicate subject matter effectively;
- to produce required educational outcomes;
- to meet the education standards of the school;
- to respond positively to reasonable advice and direction from the principal or member(s) of the administrative team;
- to treat students with dignity and respect;
- to maintain an effective learning environment;
- to maintain discipline;
- to perform assigned duties.
- to abide by school policies

If formal steps leading to termination of services are deemed to be required, the principal should initiate a summative appraisal of the staff member believed to be incompetent."

Under the heading "Procedures", clause 11 deals with the process of dismissal of a teacher upon the completion of a summative appraisal and reads as follows—

"11. If the summative appraisal establishes that a staff member is not competent, such a person is no longer eligible to be employed. The staff member is to be offered the opportunity of resigning. If the resignation is not forthcoming within a stated time, a letter of dismissal will be issued by the principal, after consultation with the school board."

EVENTS OF 1995

In 1995, the appellant had been the co-ordinator of computing teaching, but, in 1996, Ms Shirley Johnson became the co-ordinator in his place and the appellant returned as a teacher of computing. He taught computing to pupils in years 8, 9, 11 and 12. In year 12, in particular, he taught Applied Computing.

In 1996, Ms Anne Parker was the principal of UFCC, as she had been for some years, and she had also been a teacher for 23 years. Mr Hailes was the deputy principal. He, too, was a teacher of 22 years experience with six years at UFCC. Mr Hailes and Ms Parker gave evidence for the respondent. Mr Palmer, who had taught for seven years at UFCC, was also on the staff. He gave evidence on behalf of the appellant, at first instance.

Mr Paul Peter Calea was and is a teacher at UFCC and a friend of the appellant and he gave evidence. Mr Leo James Di Gregorio is and was also a teacher in 1996 at UFCC, and he, with Mr Calea, gave evidence on behalf of the appellant at the hearing at first instance.

Ms Cathy Ann Mary Lainio in 1996 taught mathematics and computing in years 9 and 10. In 1997, she had taught for eight years, seven of which were at UFCC. Mr Craig Philip Dowsett commenced teaching in 1989, but commenced teaching at UFCC in 1996 where, amongst other things, he taught years 8 and 11 computing with the appellant. They were called on behalf of the respondent. Ms Johnson was not called to give evidence.

Also called on behalf of the appellant were Mr Les Anthony Jager, a teacher of computing at Wesley College and Mr Augustin Keith Matthews, a teacher of computing at Kewdale Senior High School.

The respondent also called Ms Valerie Jane Gould, the senior education officer at the SEA in the areas of vocational education and technology and enterprise, and Dr Michael Theo Partis, director of the SEA.

At this stage, I should say that the SEA is a body which is constituted under the Secondary Education Authority Act 1984 (as amended). The functions of that Authority appear in s.12 of that Act. They include, preparing "syllabuses" (sic) for subjects in which students will be assessed for purposes of certification, assessing student performance in accordance with "syllabuses" (sic) prepared or approved by the Authority by such means as it thinks fit, preparing guidelines for the assessment of student performance by secondary education institutions, and recognising such assessment to the extent that it thinks fit. Its functions also include establishing and carrying into effect procedures for ensuring the comparability of assessment of student performance for the purpose of certification. I mention that authority's functions because Ms Gould carried out a "moderation" of the Applied Computing year 12 course taught by the appellant in 1991 and subsequently in 1996 to which I will refer to in more detail later.

The moderation in 1996 played an important part in these proceedings.

As I understand it, a moderation involves an assessment or investigation of what has occurred in relation to the teaching and/or assessment and/or examinations conducted in a particular course in a particular school after which the matter is considered by the SEA and a copy of the report is forwarded to the principal of the school. It is not, according to the evidence, an assessment of a teacher's performance, as such.

In March, April and May 1995, Ms Parker had expressed her appreciation of the appellant's participation in some school events such as a staff inservice day (see page 1 (AB)).

From July 1995 on, there was an exchange of memoranda between Ms Parker and the appellant. Problems raised at first were students playing games on computers when they should not have been. Ms Parker said that this was unacceptable at any time.

Further, there was a complaint by the appellant that he was carrying the other staff. Ms Parker indicated to him in memoranda that other staff thought that he was not a team player. There was further a complaint by the appellant that the computer rooms were not working properly despite his efforts.

On 24 November 1995 (see page 4 (AB)), Ms Parker forwarded a memorandum to the appellant in which she alleged that he had repeatedly disregarded her directives and was obstructive in allowing a technician access to the computers the day before.

On 29 November 1995 (see page 5 (AB)), Ms Parker wrote to the appellant requiring his written response and saying that disregard of her directives was a serious matter.

On 5 December 1995 (see page 7 (AB)), the appellant replied seeking details of complaints, but not denying, at that time, what she was complaining about.

On 24 August 1995 (see page 8 (AB)), Ms Parker directed the appellant in writing to delete all computer games from the computers in rooms 111 and 112, except for those games purchased as part of educational software. She also instructed him not to go into the classroom of computing teachers unless they specifically requested him to do so. There was subsequently evidence from Ms Lainio about this alleged practice of the appellant.

On 29 November 1995 (see page 11 (AB)), the appellant was formally reprimanded by Ms Parker by letter for retaining school computer equipment at his residence without approval.

By letter dated 15 November 1995 (see pages 12 and 12-2 (AB)), the appellant accepted that he should have had approval to use this equipment at home at the time, but asserted that he did not intend to retain this property for himself, but used it to do work for the school.

On 11 December 1995 (see page 13 (AB)), the appellant also raised questions about the intellectual property in learning material which he had developed.

On 7 December 1995 (see pages 14 and 14-2 (AB)), the appellant also made a complaint about problems in a computer room due to changes effected by outside contractors, Nimrod Computing Services.

On 8 December 1995 (see page 15 (AB)), Ms Parker replied that many of these problems had been exacerbated by the appellant's own action and inaction.

That evidence gives some idea of the situation between the appellant and Ms Parker by the end of 1995.

EVENTS OF 1996

In 1996, there were a number of matters of controversy between Ms Parker and the appellant. Some of those matters involved other teachers. These matters were the subject of a significant number of memoranda and letters which were tendered at first instance and copies of which appear in the appeal book.

It does not seem to be in dispute that the computers were "down" for the first two weeks of the school year in 1996, meaning that work on the machines could not be done. However, the appellant complained that there was about five weeks of "down time" during the 1996 year which inhibited his ability to teach the Applied Computing course to year 12, in particular. He referred to the Nimrod Service Ticket Analysis (see pages 20 and 20-2 (AB)) for corroboration of this fact.

There was evidence from Mr Jager and Mr Matthews about the effect of "down time" on the ability to teach a computing course. However, the evidence of Ms Parker was that there was not that much down time. Her evidence was corroborated by Ms Lainio and Mr Dowsett who said that, in any event, it did not prevent their completing the teaching of computing courses.

There was further evidence from Ms Gould to the effect that this breakdown or "down time" "went with the territory" in teaching computing and one had to build one's programme

around the inevitable fact that there was breakdown in computers from time to time.

On 2 March 1996 (see page 16 (AB)), the appellant complained to Ms Parker that he had come to the school a week before school started to prepare for the school year. In room 112 there was a mess, he said, which he had to clean up. However, Ms Parker informed him that these matters should have been reported by him to the bursar for that person to deal with (see page 17 (AB)).

On 13 March 1996 (see page 18 (AB)), the appellant applied for promotion to senior teacher level 1, a promotion which was not granted to him.

There were various communications about out of date material, delays in repairs and deficiencies in equipment, the need for new equipment and programmes and resultant down time from the appellant to Ms Parker (see, for example, pages 21, 23, 27, 28, 29, 32, 35-2, 35-3, 36 and 37 (AB)).

There were also interchanges in memoranda about students playing computer games, where the appellant said that the directive was being rigorously enforced by him and in which he sought particulars of the allegations (see page 10 (AB), 24 April 1996).

Ms Parker complained to the appellant about students doing private study in class. She also directed him as to the positioning of the teacher's desk in room 112, which he asked her to reconsider.

The appellant complained about uninvited classroom visits by Ms Lainio and Ms Johnson (see page 35 (AB)).

On 21 August 1996, after the summative appraisal had commenced, the appellant complained about delays occasioned by Access To Programmes not functioning.

On 9 October 1996, the appellant complained that four or five weeks in down time was lost verifiable by reference to the Nimrod timesheets, including two weeks at the start of term three. This complaint he purported to support by three written complaints from individual pupils.

SUMMATIVE APPRAISAL

I now turn to the process of summative appraisal and what followed it in 1996.

This is part of a process of on-going teacher professional development, performance, planning and review prescribed in Appendix 1 of the award, an extract of which appears at pages 41 and 41-2 (AB), as I have said.

The summative appraisal described in Appendix 1, clause (2)(b), is described as having as its purpose "the determination of the professional competence of a teacher in respect of the confirmation of appointment or for promotional purposes".

In particular, clause (4), however, refers to the necessity to conduct a summative appraisal where the reviewing of the performance of a teacher with a view to the "possible termination of employment" is necessary. A summative appraisal did take place.

CATHOLIC EDUCATION COMMISSION OF WESTERN AUSTRALIA: POLICY STATEMENT

The Catholic Education Commission has some responsibility for what occurs in Catholic schools. Advice from their industrial relations staff was sought by Ms Parker. The Catholic Education Commission had, at the material time, a policy for governing the termination of staff members for incompetence or misconduct (see pages 41-3, 41-4 and 41-5 (AB)).

In the case of incompetence, the policy prescribes, amongst its principles, that formal action would normally follow a period of counselling and support (see paragraph 3 of the principles). The principle also requires that a summative appraisal then occur if "formal steps leading to termination of services are deemed to be required" in the case of a member of staff believed to be incompetent.

There are also procedures prescribed involving the recording of material matters (see paragraph 2 of the procedures), making records available to the teacher concerned and formally investigating the staff member's performance, informing that person in writing and advising that a person of that member's choice can be present giving an opportunity to discuss and redress the problem.

Paragraph 7 of the procedures prescribes how the assessment is to occur with written notice having been given.

Paragraphs 9 and 11 of the procedures are important. I quote hereunder paragraph 9 of the procedures (see page 41-4 (AB))—

- “9. If, in the judgment of the principal and following consultation with the Catholic Education Office, the staff member has not made the necessary performance improvements, he or she must be informed in writing that:
- a decision has been made to proceed with the formal summative appraisal process which may lead to dismissal,
 - the form and conduct of the appraisal is to be determined by the principal with the advice from the Catholic Education Office
 - the staff member will be given the opportunity to respond and raise any matter which the staff member wishes the principal to take into account in reaching his or her decision.

A copy of the letter is to be forwarded to the Congregational Leader or School Board for information.”

Paragraph 16 of the procedures, which is also important, reads as follows (see page 41-5 (AB))—

- “16. If the summative appraisal finds that the staff member is no longer eligible to be employed, the staff member is to be offered the opportunity of resigning. If a resignation is not forthcoming within the required time, a letter of dismissal will be issued by the principal. A copy of the letter to be forwarded to the school board for information.”

THE PROCESS OF SUMMATIVE APPRAISAL

I mention those matters because at the beginning of the 1996 school term Ms Parker told the appellant that she wished his work to be subjected to a summative appraisal.

On 18 March 1996, she wrote to him to confirm this (see pages 42 and 42-2 (AB)). In that letter she advised that a number of matters required his “immediate attention and action”. These included the provision of programmes, course outlines and assessment outlines for all classes, keeping students “on task”, supporting and co-operating with the computing co-ordinator and the faculty, remaining in the classroom, and not entering other teachers’ classrooms unless invited. In that same letter, the appellant was also advised that the appraisal panel would consist of Mr Hailes, the deputy principal, Ms Johnson, the computer co-ordinator, and a staff member of his choice. In the letter, he was also advised of other matters, and, in particular, that he would be again assessed by the panel members in week 10 of term two, as to his ability to deal with any previously identified inefficiencies. The end of the letter clearly advised him as follows—

“As the issues I have raised have been ongoing for some time, your assessed performance and your ability to reach and maintain a satisfactory level of performance will determine your future employment at Ursula Frayne Catholic College.”

This was a clear indication as to the seriousness of the process. The letter further advised—

“Every assistance will be offered to you to achieve and maintain a satisfactory level of performance.”

There were discussions about the process which involved, amongst others, the appellant (see pages 44, 45 and 45-2 (AB)).

Ms Theresa Howe is a representative of the Independent Schools Salaried Officers’ Association of Western Australia, Industrial Union of Workers (hereinafter referred to as “the union”), and a representative of the Catholic Education Office.

It is clear, too, that from time to time during the course of events in 1996 the union involved itself on the appellant’s behalf, despite his disavowal in evidence of that representation.

The process of appraisal in its two stages took place, commencing early in the second term of 1996, and finishing in June 1996, and then recommencing in late August 1996 and finishing in September 1996.

The appellant, at the beginning, insisted that one member of the appraisal committee be selected from outside UFCC. He proposed three names. He also took exception to Ms Johnson being involved alleging “bias” on her part (see the memoranda dated 6 May 1996, pages 46-47 (AB)). He nominated Mr Jager of Wesley College, in particular, but Ms Parker was not agreeable to an outside person being involved. There was some discussion, in evidence, about Mr Jager’s availability, but, in fact, the employer did not agree to someone outside the school being involved. Mr Palmer, who Ms Parker said in evidence would, she thought, be favourable to the appellant, was appointed from within UFCC. In the end, his reports were, it could be fairly said, favourable to the appellant. The union alleged that the process was unfair, however, because the appellant’s request was not acceded to.

There was formal advice of areas of appraisal and the timetable for the appraisal dated 23 May 1996 (see page 53 (AB)).

THE APPRAISAL REPORTS

The appraisal reports were completed in relation to the first appraisal on 10 June 1996. Their contents were discussed by Mr Palmer and Mr Hailes with the appellant and they were certainly made available in copy form to the appellant.

Mr Palmer’s report was a very brief one which related to two visits to the classroom and contained little criticism. The question of “documentation” and assessment matters, as well as programmes, was not mentioned, nor was the question of co-operation (see page 54 (AB)).

Mr Hailes’ report was a comprehensive and detailed report based on historical data, observation, formal classroom observation, a review of requested “documentation” and interviews and discussion with the appellant. Mr Hailes observed in his report that the appellant appeared to be more comfortable with senior and/or capable students, that his classroom management was more than satisfactory and his classes well behaved and “on task”. He observed, too, that the appellant had not been known historically for his attention to documentation, but observed that this was improving and that he was two-thirds towards the standard required (see pages 55 to 55-5 (AB)). He had a frank discussion with the appellant about collegiality. It is clear, without expressing it baldly, that Mr Hailes was raising problems about the appellant’s attitude to teamwork and collegiality. The last paragraph of his report makes that clear. Mr Hailes also referred to the appellant’s communication with his colleagues by memorandum instead of orally.

Ms Johnson’s report refers to events on a number of days and to classroom visits (see pages 56-2 to 56-9 (AB)). She also referred to historical data. She made it clear that his computer competence was not being questioned (see page 56-8 (AB)). In addition, she acknowledged his assistance to her in regard to computers proper. She also acknowledged the teaching notes prepared by him. However, she criticised a failure on his part to change teaching material and also his teaching methods and “strategies”. She further said that he liked to work by himself and was not comfortable working in a team or as a member of a team. This was a criticism borne out by the evidence of other witnesses.

On 2 July 1996 (see pages 59 and 59-2 (AB)), Ms Parker wrote to the appellant advising him of a number of areas of on-going concern which arose from the performance appraisal. There were eight items mentioned. These included the necessity to remain in class, the necessity for students to remain in class, the preparation of proper assessment records, programmes and the implementation of proper test examinations, etc. Ms Parker fixed meetings for him to discuss these with her on 4, 24 and 29 July 1996.

Later, there was also a reference in a communication from Ms Parker to a breakdown in communications between Ms Johnson, Ms Lainio and the appellant.

On 21 August 1996 (see pages 65 to 65-4 (AB)), the appellant forwarded a lengthy memorandum to Ms Parker raising a number of matters.

On 22 August 1996 (see pages 66 and 66-2 (AB)), Ms Parker wrote to the appellant referring to discussions with Mr Ivan Sands of the union and Mr Paul Andrew of the Catholic Education Commission. She reiterated a number of the concerns raised in her letter of 2 July 1996. She complained of an

inability by the appellant to follow directions given him by her and Ms Johnson. She advised that she wished to go through his assessment records, programmes, tests, etc. She referred to the need for him to work co-operatively as a team member and reiterated the seriousness of the process which was occurring.

The second appraisal process reports are dated 30 September 1996. Copies of these, as was the case with the reports pertaining to the first part of the process, were provided to the appellant.

Ms Johnson's report (see pages 70 to 70-10 (AB)) contains trenchant criticisms alleging that "things have seriously deteriorated", alleging that the appellant ignored instructions and was unable to use teaching approaches appropriate to the year which he was teaching, and, further, that he was not "comfortable with" a regular testing procedure. These were, in part, difficulties which continued until he was dismissed.

There are two very severe criticisms in the report and one was as follows (see page 70-10 (AB))—

"Les, is uncooperative, unwilling to be a team member, insensitive and unable to make a two-way communication with other computing staff. This has affected staff morale to the point that most of the computing staff have indicated that they do not wish to team teach with Les in the future."

This, of course was, at least in part, denied by the appellant, in evidence.

Ms Johnson criticised the appellant, too, for a lack of concern for his students. In the end, she observed that his current level of professionalism did not meet the required standard of a modern educational institution.

Mr Palmer's second report was, in the main, favourable to the appellant, including one observation favourable to the appellant's teamwork on one occasion (see pages 71 and 71-2 (AB)).

Mr Hailes' second report was directed to one aspect only and this was teamwork and collegiality. It is a very critical report and is summed up best in the following words of Mr Hailes (see page 72 (AB))—

"Despite being given every opportunity over a number of years to move forward in this area, I find Mr Magyar's inability to recognise the essential elements of an effective team, his lack of ownership for the role he has played in detracting from staff harmony and his reluctance to implement professional and personal advice untenable.

Mr Magyar's modus operandi in the area of staff co-operation and collaboration has no place in a secondary school."

The appellant wrote two memoranda dated 16 and 23 September 1996 to Ms Parker asserting that he was a competent teacher and that the SEA moderation report would bear that out. His memoranda are critical of Ms Johnson and seek further particulars of Mr Hailes' and Ms Johnson's reports (see pages 73 to 74-2 (AB)).

On 16 October 1996 (see page 75 (AB)), Ms Parker wrote to the appellant and advised him that the summative appraisal had been completed and that it was apparent after considering that and his response that the findings were adverse. She then identified the major issues.

On 30 October 1996 (see pages 76 to 77-11 (AB)), the appellant formally responded to the reports. His conclusions are at page 77-10 (AB) and I quote them here in full—

"CONCLUSIONS

I have carried out my duties and complied with all lawful and reasonable directives. Expressing a concern or an opinion on professional matters is the duty of all staff.

Many of the conclusions are contradictory in that there seems to be one set of conditions for myself and another set for other staff.

- (a) I am not allowed to enter or stay in another classroom but other teachers are.
- (b) I am not allowed to do work on a computer while class is in progress but others are.
- (c) I am not to question any directive or instruction but others are with immunity.

Statements in this and the first report contain exaggerations that are deliberately designed to create impressions that simply do not exist—"Also the fact that he leaves all his personal belongings, classwork, papers, notes, files etc. all over the teaching desk and cupboards" is a typical example.

Secondly, I find the practice of documenting so called serious offences, not raise these matters with the person concerned at the time of the offence but to be used at some convenient time in the future is a serious breach of fairness and basic Christian justice.

If Mrs Johnson suspected any student in my class of cheating she had the responsibility of bringing that to my attention and if Mrs Johnson had enquired from me the nature of the lesson on 28 August rather than rely on a report from a student she would have received the appropriate answers.

Reference—Teaching/Learning

Many teachers (over a 7 year period) use my learning materials for the key or essential topics of Word Processing, Spreadsheet and Database. Very rarely has anyone ever suggested the use of alternative materials. If the materials were deficient then why did they use the materials so much over such an extended period of time?

If the materials are deficient, outdated, do not provide the stimulus then I for one suggest that they be changed and I would be happy to participate in contributing to the change.

It is easy to criticise but to date there has been no direct support or assistance as to how I could improve and I reject totally that I have shown a lack of concern for my students."

The appellant's conclusions in reply to Mr Hailes report are at page 77-11 (AB) and I quote them here in full—

"CONCLUSION

This report is I concede, somewhat detailed but it has allowed me to address many of the concerns that I have encountered during the course of this appraisal.

Many of the specific matters raised have been impossible to answer because of the manner in which they have been reported; some of the more serious charges against me were deemed to be more useful in my appraisal rather than a means of bringing them to my attention at the time, so that I may have the opportunity to address my misgivings as part of my development as a useful member of the teaching staff.

If this report is viewed as another example of my questioning the policy and directives of the College then so be it.

I am the first to admit that I have made mistakes; but in regard to this appraisal I believe that the process has been somewhat tainted by the seemingly lack of trust and honesty.

I say this not to cause discontent or disharmony but to indicate my feelings in this matter; I would be less than honest to say otherwise.

I present this report for your consideration."

In particular, the appellant denied that he was not a team player, citing examples to support his assertion (see page 77-8 (AB)). At pages 77-4 and 77-5 (AB), also, he denied the criticisms levelled against him. At page 77-7 (AB), he referred again to the difficulties caused by four to five weeks down time with the computers and the failure to provide adequate resources.

On 1 November 1996 (see page 78 (AB)), Ms Parker invited the appellant to meet her so as to inform him of a decision which she had made.

In the meantime, of course, the SEA moderation had occurred and produced a report to which I will refer in detail later, which was very damaging to the school and had the potential to damage the students.

On 5 November 1996 (see page 79 (AB)), Ms Parker wrote the appellant a letter giving him notice of termination of his appointment. I have reproduced that letter above.

THE MODERATION BY THE SEA

The director of the SEA was invited by Ms Parker, who was concerned with the outcome of the summative appraisal of the appellant, to conduct a moderation of the year 12 Applied Computing course.

Ms Gould, who gave evidence in these proceedings, an experienced person and a person experienced in the computing area, conducted the necessary assessment. It is quite clear, on the evidence of Dr Partis, director of the SEA, and of Ms Gould, that the report provided was a report to the principal from the moderator on the course taught, implementation of the course assessment and grading requirements. The opinions expressed in the report were discussed by Ms Gould with the appellant.

The first moderation visit was completed on 26 September 1996 and a report made dated 16 October 1996, a copy of which went to Ms Parker. The report was critical of what had occurred in the year 12 Applied Computing course taught by the appellant.

There was a further report following a visit on 24 October 1996.

On 30 October 1996 (see page 87 (AB)), Dr Partis wrote raising a number of concerns arising from the two visits, namely that—

- (1) The course content had not been covered and assessed.
- (2) Assessment had been at an inappropriate standard for year 12.
- (3) The assessment records produced did not conform to the SEA's Assessment Structures for the course.
- (4) The actual data in the assessment records was often wrong since it did not agree with work samples seen.

These were patently serious matters.

In his letter, Dr Partis advised that one approach which the SEA could take was to reject all grades for the course. However, as he said, he realised that the students were the ones to suffer if this course of action were to be followed. However, those comments evidence the seriousness of the defects reported upon by Ms Gould.

Dr Partis in his letter invited Ms Parker's comment and she responded on 1 November 1996 (see page 88 (AB)) by advising that the appellant would not be teaching years 11 or 12 computing at UFCC in 1997 and inviting help from the SEA.

In the end, a new exam was set and the results of that exam, together with some information gleaned from existing records, resulted in a mark being set by the SEA. However, no student was given an A or B, the highest mark awarded being a C (see pages 89 to 89-2 (AB)).

In 1991, Ms Gould had reported on the year 12 Applied Computing course at UFCC in terms which were, as I understand the evidence, critical of it. That course was then also taught by the appellant. The appellant alleged that Ms Gould was biased both before the Commission and in correspondence with Dr Partis. Ms Gould rejected that allegation, as did Dr Partis.

On 2 October 1996 (see page 80 (AB)), the appellant wrote to Dr Partis complaining that he had not been given a chance to respond to Ms Gould's report before it was compiled, although he acknowledged that he had had a discussion before she left. He also sought that the second moderator should be appointed, a proposal rejected by Dr Partis.

FINDINGS OF THE COMMISSIONER, ISSUES AND CONCLUSIONS

The decision in this matter was a discretionary decision as that is defined in *Norbis v Norbis* 65 ALR 12 (HC).

It is for the appellant to establish that the Commissioner erred in the exercise of its discretion, according to the principles laid down in *House v The King* [1936] 55 CLR 499 at 505 (HC). If that is not done, then the Full Bench cannot substitute its exercise of discretion for that of the Commissioner.

Further, insofar as the Commissioner reached its decision and made findings based on the advantage enjoyed by the Commissioner in seeing the witnesses, which he patently did, then I apply what was held by the majority in *Devries and Another v Australian National Railways Commission and Another* [1992-1993] 177 CLR 472 (HC), per Brennan,

Gaudron and McHugh JJ at page 479 where Their Honours said—

“... a finding of fact by a trial judge, based on the credibility of a witness, is not to be set aside because an appellate court thinks that the probabilities of the case are against—even strongly against—that finding affect. If the trial Judge's finding depends to any substantial degree on the credibility of the witness, the finding must stand unless it can be shown that the judge “has failed to use or has palpably misused his advantage”, or has acted on evidence which was “inconsistent with facts incontrovertibly established by the evidence” or which was “glaringly improbable”.”

Further, submissions that there was a lack of procedural fairness in the dismissal were made by the appellant. In *Shire of Esperance v Mouritz* 71 WAIG 891 (IAC) the law on this point was made clear by the Industrial Appeal Court. In particular, Kennedy J said at page 895—

“In my opinion, any breach of the rules of natural justice was a relevant circumstance in the determination of the critical question as to whether the dismissal was harsh or unjust. Whether an employer, in bringing about a dismissal, adopted procedures which were fair to the employee is an element in determining whether the dismissal was harsh or unjust—see *The Law of Employment*, Macken, McCarry & Sappideen, 3rd ed, 277-278, and the authorities there cited. In some cases, this can be a most important circumstance. But in a case such as the present, no question of the invalidity of a decision, as such, falls for determination. The case does not turn simply upon the respective legal rights of the parties.”

The Commissioner correctly identified its task as being to decide whether the legal right of the respondent employer to dismiss was exercised so harshly or oppressively towards the appellant as to amount to an abuse of that right. The Commissioner also correctly decided whether the appellant's dismissal was unfair upon a consideration of all of the circumstances. The Commissioner correctly applied *Miles and Others t/a Undercliffe Nursing Home v FMWU* 65 WAIG 385 (IAC) (“the Undercliffe Case”).

There were a number of issues which the Commissioner decided and which findings were the subject of the grounds of appeal. I will consider them here—

(1) ALLEGED BREACHES OF THE POLICY GUIDELINES FOR TERMINATION OF SERVICES OF STAFF MEMBERS—INCOMPETENCY OR MISCONDUCT

The Commissioner considered the steps required to be taken according to that principle. The Commissioner adverted to them and observed that there was little point in considering whether the steps required to be complied with before the summative appraisal occurred were taken. As the Commissioner correctly found, there were occasions when one or two of the appellant's memoranda were not answered. The Commissioner, further, correctly observed that the Catholic Education Commission Policy Statement was relevant. However, the Commissioner also observed that following that policy should ensure that the procedure is fair. However, failure to follow the procedure laid down in the policy would not, in my opinion, ipso facto, render the dismissal unfair. That is because the policy really prescribes steps to enable procedural fairness to be accorded to a person who might be dismissed. Thus, if there were procedural fairness denied, that might or might not be a major determinant in enabling the Commissioner to decide whether the dismissal was unfair (see *Shire of Esperance v Mouritz* (op cit) (IAC)).

Where a person is to be dismissed for misconduct or incompetence, a major part of the process is required to be (unless otherwise agreed, which was not the case here) the summative appraisal. That was certainly the case here. The Commissioner, however, was entitled to hold that the failure to adhere to every portion of the procedures did not necessarily by itself render the dismissal unfair.

Nonetheless, even though there might be a breach of the prescription of the award for the conduct of the summative appraisal, the fact that there is not full compliance with the award would not of itself mean that there was a lack of procedural fairness, or, alternatively, be such a breach of the award that it would necessarily render the dismissal unfair. Of course, serious failure to adhere to the procedures might of itself alone render the dismissal unfair on the authority of *Shire of Esperance v Mouritz* (op cit) (IAC).

(2) APPENDIX 1 OF THE AWARD

This, as I have observed, provides a procedure to be followed in relation to a summative appraisal, which, in this case, was properly used where the future of the appellant's employment was at stake, as he was advised before the appraisal process commenced.

The Commissioner observed that even if the prescription contained in Appendix 1 of the award was not followed then that would not of itself render the dismissal unfair. Even if the procedures were followed, then the dismissal might still be unfair. The reasoning which I have used in relation to the previous heading also applies.

A major complaint of breach of Appendix 1 of the award related to clause (2)(b)(iii) which reads as follows—

“(iii) during the process, the teacher shall be kept informed of the progress of the appraisal and shall be allowed to nominate any teacher to contribute to the appraisal on his or her behalf,”

The appellant and the union contended at the time that he was entitled to nominate a teacher from outside the school to participate in the appraisal process. Three teachers were nominated by him, but none were accepted because they were outside UFCC. There is no prohibition upon a teacher from outside being nominated, contained in that clause, upon a fair reading of the plain words. Indeed, it might be desirable on certain occasions that that occur. I should add, too, that there is no compulsory requirement that all or any of the persons conducting a summative appraisal should come from outside a school. In many cases an inquiry which precedes a dismissal or might lead to a dismissal might be conducted entirely by managerial employees of an employer or by the employer. There was in this case two objections to Ms Johnson as biased against the appellant. It is noteworthy, however, that the Commissioner had the benefit of not having heard any evidence from Ms Johnson, although, as I have observed, copies of her appraisal reports were tendered and admitted into evidence.

The Commissioner considered whether, if Mr Jager had been included in the appraisal process, the result of the appraisal might have been different. The Commissioner found that as to the conclusions of Ms Parker, and as a result of the SEA moderation, there was no evidence or suggestion that inclusion of the appellant's nominee would have produced a different result. Mr Jager spoke favourably of the appellant's lesson materials. However, Mr Dowsett and Ms Lainio did not and gave evidence that they do not use them any more.

There was evidence from Mr Matthews, Ms Lainio and the appellant about allowing students to play computer games. However, as the Commissioner accepted, and as was the case, that issue did not play a significant part in the decision to dismiss the appellant. Ms Parker's evidence on that point was accepted by the Commissioner.

The Commissioner also accepted, generally, Mr Jager's evidence (Mr Matthews' evidence was not mentioned) concerning the effect of “down time” and certain student-computer ratios on a teacher. Ms Parker, of course, gave evidence that the student-computer ratio was not an unsatisfactory one and was more weighted in the pupils' favour than the appellant's evidence indicated.

Ms Parker's evidence was generally preferred by the Commissioner.

Further, there was direct evidence from Ms Parker, Mr Dowsett and Ms Lainio to the effect that there was not the amount of down time which the appellant claimed there was, and that they had no difficulty in completing the teaching of their courses in 1996. This was corroborated by the evidence of Ms Gould that down time and breakdowns “go with the territory” in computer teaching and that one has to work around them and adjust the teaching time to them.

The evidence of Ms Parker, Mr Hailes, Mr Dowsett and Ms Lainio was preferred by the Commissioner, because of their direct knowledge and experience of the appellant, to the witnesses called on behalf of the appellant.

The Commissioner observed that the adverse outcomes referred to in the summative appraisal, and mentioned in Ms Parker's letter of 16 October 1996, included a failure to follow instructions given by the principal and the computing co-ordinator, inadequate assessment testing and programme records, and failing to follow agreed programme and course outlines. The last two adverse outcomes were supported by the evidence of Mr Hailes, Ms Parker, Ms Gould and Dr Partis, as the Commissioner correctly observed.

Further, Mr Hailes was a person about whose activities in the appraisal role the appellant did not really complain until he made his adverse second appraisal report. Mr Hailes was scathing about the appellant's lack of collegiality and inability to be involved in “teamwork”, a view shared by Ms Parker, Mr Dowsett and Ms Lainio, and further referred to in the report of Ms Johnson.

The Commissioner seems also (see page A13 (AB)) to have accepted Ms Parker's evidence that the appellant did not comply with directions from Ms Johnson, in preference to the appellant's evidence.

I would also add that Mr Palmer, who was not unfavourable to the appellant, was also part of the appraisal process. I would agree that the absence of an outside nominee, although not desirable, did not alter, nor would it, on the evidence, a fair outcome of the appraisal process. It is noteworthy that the outcome was achievable without Ms Johnson's report.

The Commissioner was entitled to find on all of that evidence as he did and for the reasons which he did which seem to me on a reading of the evidence to be valid.

I would make one or two other observations.

PARTICULARS

In the course of his submissions upon this appeal, the appellant laid emphasis on the fact that he was not given sufficient particulars of allegations made against him. It would seem to me, on a reading of the whole of the evidence, including all of the documents which were exhibits, that he was advised of all the complaints against him in sufficient detail, that he was advised and counselled about these matters, and that he was or ought to have been fully aware of what was alleged against him both from oral discussions, from the participation of his union, and from the memoranda and letters sent to him and the appraisal reports, as well as the SEA report. I see no unfairness in that. Even if there were, there was not sufficient unfairness to render the dismissal unfair.

MS JOHNSON'S DIARY

In addition, the appellant made mention of the fact that Ms Johnson was keeping in her diary a note of difficulties that she experienced with him. He attempted to tie that into the summative appraisal process, but the allegations which were made against him were formally put to him in the reports for comment and he commented, and I do not think that the private notebook of a person recording incidents as an aid memoir, as it seemed to be, could be said to have been some breach of the summative appraisal provisions or to be in any other respect regarded as unfair.

WAS THERE A VALID REASON FOR DISMISSAL?

The Commissioner accepted the evidence of Ms Parker, who had been an educator for 26 years. The Commissioner accepted

her evidence as clear and consistent and not broken down in cross-examination. I must say that on a fair reading of the transcript of her evidence that view is patently valid. As a result, the Commissioner accepted her evidence that when she tried to raise matters with the appellant he deflected criticism and did not accept it.

The Commissioner also accepted the following evidence. There were complaints about the appellant by other teachers, Ms Parker said. Indeed, there was evidence of that from other teachers. She raised matters such as punctuality, leaving the class unattended and work programmes not being up-to-date with him. The evidence was that she had several meetings with him after the first appraisal to deal with matters of keeping records and assessment and other documents, and at the end of both segments of the appraisal process the appellant availed himself of the opportunity to comment. It is quite clear, as the Commissioner found, that Ms Parker was sufficiently concerned after the appraisal process to consider a moderation warranted when she saw the outcome of the appraisal. It is quite clear, in my opinion, having regard to the report from Ms Gould, that such a moderation was very much warranted, and it was open to so find. The moderation, of course, confirmed that there were serious problems. The Commissioner so found. As a result, Ms Parker decided, as the Commissioner found, to dismiss the appellant.

The Commissioner found Mr Hailes' evidence to be "quite compelling". He was also one of the appraisers, as I have said. The Commissioner found his evidence clear and not broken down in cross-examination. Again, on a reading of his evidence in the transcript that seems to be a fair comment. The appellant, as I have said, criticised the second report of Mr Hailes', but not the first report which was relatively favourable to him and it was certainly viewed as favourable by the appellant. The Commissioner adverted to these opinions of the appellant.

The Commissioner also accepted the evidence of Ms Lainio. Ms Lainio gave evidence that the appellant criticised her and complained about her by memorandum to her superiors. This, she said in evidence, caused her stress.

Mr Dowsett's evidence was also critical of the appellant's attitude to him as a colleague and to his ability to work with his colleagues, and was accepted as one of the teachers who knew the appellant, by the Commissioner.

In particular, the Commissioner did not accept the appellant's criticism of Mr Hailes' second report. (I have outlined its conclusion above). The Commissioner accepted that conclusion, one supported by the evidence of Mr Dowsett, Ms Lainio and Ms Parker, namely that he was unable to recognise the essential elements of an effective team, that he did not recognise the role he had played in detracting from staff harmony, and that he found untenable the appellant's reluctance to implement personal and professional advice.

The Commissioner also accepted Mr Hailes' conclusion that the appellant's modus operandi in the area of staff co-operation had no place in a secondary school. That, of course, was Ms Parker's evidence in substance and it corroborates what was contained in Ms Johnson's report. The appellant denied these allegations at all times and gave evidence of his co-operation. There was evidence of his willingness to assist with matters relating to the computers themselves and with the school fete, for example. However, there was substantial evidence, to which I have already referred, and on which the Commissioner relied, of the appellant's failure to apply principles of collegiality and participate as a colleague and "team member". The Commissioner was entitled to find that the appellant had so failed. On a fair reading of the evidence, I am of opinion that it was very much open to the Commissioner to find as he did (see page 15 (AB)).

THE SEA REPORT

The appellant criticised the report as composed by a person who was "biased" against him. He sought that a second moderation in effect replace that carried out by Ms Gould. The alleged bias was said to arise because in 1991 Ms Gould had examined the computing course at UFCC then taught in year 12 by the appellant. This allegation was not pursued when Ms Gould gave evidence, and there was no direct evidence of any such bias. Dr Partis was satisfied that there was no such bias,

and there is no evidence of any such bias. In the end, Ms Gould's findings coincided with some of the criticisms of the appraisers and the evidence of Ms Parker.

The Commissioner noted that the appellant, when first informed of the impending moderation visit, wrote to Ms Parker welcoming the visit and stating—

"I strongly suspect that in broad terms the moderation visit will confirm that I have conducted Year 12 Applied Computing in accordance with the Secondary Education Authority guidelines."

In fact, that was found not to be the case. When the visit resulted in a finding much to the contrary, it was then that the appellant alleged "bias". There was no evidence of any.

I would emphasise that the SEA, as a regulating authority, was carrying out its statutory responsibilities. Its duty was to investigate matters in accordance with its duty under its statute and report to the principal. Ms Gould's visit was directed to examining the situation as to the marks achieved, the course as taught, and the process of assessment in relation to year 12 Applied Computing at UFCC. Even so, Ms Gould discussed matters with the appellant.

In the end, the Commissioner was entitled to find, for those reasons, that there was no bias, although bias in the strictly legal sense was not a consideration in this matter.

The SEA report revealed serious shortcomings in the teaching and assessment of year 12 Applied Computing students so that their marks were not validly assessable and a new exam had to be sat. In the end, the fact that the pupils were assessable in this subject at all was due to the assistance of the SEA.

There was corroboration of the criticisms of the appellant which had been raised with him throughout 1996 which he had been counselled to remedy and in which he had failed or was unable to achieve the appropriate standards.

CONCLUSIONS

The specific evidence of the summative appraisal and the moderation report revealed serious shortcomings in the appellant to the extent that his students in year 12 Applied Computing were in danger of having the marks applied to them rejected. In the end, some may not have been given the mark which they ought to have achieved. The highest mark achieved, as I have said, was C.

The SEA report corroborated the appraisal findings in relation to some serious matters. The evidence of Mr Calea, Mr Di Gregorio and Mr Palmer, it was open to the Commissioner to find, and it did, at least on the principle in Abalos v Australian Postal Commission [1990] 171 CLR 167 (HC), were not sufficient in content to overcome the specific findings in the appraisal reports and the SEA reports, and, indeed, computing teaching colleagues involved with the appellant, as well as Ms Parker.

Further, the letter of 16 October 1996, which the appellant attacked, clearly sets out three major adverse findings.

Deficiencies also were identified in the summative appraisal reports in detail in the work and approach of the appellant. The Commissioner so found and it was open to it to so find.

The taking of steps to hold the summative appraisal was, in the end, entirely justified, as was the decision to invite a visit by the SEA. Indeed, the visit of the SEA may have saved the year 12 students from worse difficulties than they had already encountered. The moderation and the summative appraisal, together with Ms Parker's conclusions, left the employer with little alternative but to dismiss the appellant, so the Commissioner found, and it was open to so find.

The appellant was an experienced teacher, and the evidence which the Commissioner accepted, and which it was open to accept, could lead to no other conclusion than that the appellant's standard of teaching and his interaction with his colleagues fell far short of the standard which his employer was entitled to require. Even if there were departures from the requirements of Appendix 1 of the award and the Catholic Education Commission Policy Statement, then such breaches of the award or of the standards of procedural fairness did not render the dismissal unfair, nor should they have been found to.

The appellant was advised about difficulties in 1995. He was advised of the summative appraisal procedure, its course

and possible consequences. He was consulted before it occurred. The "union", which certainly purported to represent him, was involved in discussions too and at other times throughout 1996. Mr Hailes, in particular, had at least one lengthy discussion with the appellant in the course of the appraisal. He was able to comment on all the appraisal reports. He availed himself of the opportunity to do so. After the first appraisal reports, Ms Parker met with him to discuss aspects of them. The appellant had no quarrel with appraisals in his favour. Mr Palmer was not unfavourably disposed to the appellant. If Ms Johnson, who is the appellant's superior, might be said to be required to be involved, had antipathy towards him, then her adverse findings in material respects were corroborated by others. Mr Hailes had discussed teamwork and collegiality problems with the appellant.

Credit was given to the appellant in evidence as a "computer wizard" and in relation to those areas where he did help.

Ms Parker discussed the decision to dismiss the appellant with other persons. She considered the appellant's personal circumstances and sought to preserve his reputation. She set out in detail the reasons which required the appraisal and the areas in which the appellant had to improve. In fact, during the appraisal report, on the evidence, the appellant's performance deteriorated. The process was an entirely fair process. It was open to the Commissioner to so find.

The procedure followed by the respondent was not unfair, for those reasons. Even, however, if it were, it was not such as to render the dismissal, which was for very substantial reasons, unfair (see *Shire of Esperance v Mouritz (op cit) (IAC)*).

The Commissioner, in short, was entitled to find, insofar as it was necessary, that there was a valid reason for dismissal related to the appellant's capacity and based on the operational requirements of UFCC. There was a "fair go all round" accorded to the appellant in terms of the principle outlined in the *Undercliffe Case (op cit)*, both substantively and procedurally.

The Commissioner did not misuse its advantage at all in seeing all of the witnesses, and certainly not in the manner referred to in *Devries and Another v Australian National Railways Commission and Another (op cit) (HC)*. There is nothing in the principle in *Devries and Another v Australian National Railways Commission and Another (op cit) (HC)*, which I have outlined above, which requires the Full Bench to interfere. Where there was not evidence specifically dealt with, then the principle in *Abalos v Australian Postal Commission (op cit) (HC)* is plainly applicable. The application was dealt with at first instance fairly, thoroughly and correctly.

The appellant has not established that the exercise of the Commissioner's discretion miscarried in any of the ways referred to in *House v The King (op cit) (HC)*, or that the Commissioner erred as alleged in the grounds of appeal.

I have considered all of the evidence, all of the submissions, and all of the relevant material in reaching this decision.

It is not necessary to deal expressly with every single ground of appeal. In the context of what I have found, there is no ground of appeal which is made out, or, even if made out, would lead to a finding of error in the decision at first instance justifying the appeal being upheld.

I have considered what was before the Commissioner and the issues in this matter in considerable detail, including all of the evidence. However, we were in receipt of very detailed submissions, particularly from the appellant, who had much at stake in these proceedings. It was necessary to consider in detail and reproduce in some detail the evidence, both oral and written.

I would, for those reasons, dismiss the appeal.

COMMISSIONER GEORGE: I have had the benefit of reading in draft form the Reasons for Decision of His Honour the President. I agree with the Order proposed for the reasons set out therein and have nothing to add.

COMMISSIONER SCOTT: I have had the benefit of reading the reasons for decision of His Honour, the President. I agree with those reasons and have nothing to add.

THE PRESIDENT: For those reasons, the appeal is dismissed.

Appearances: Mr L G Magyar on his own behalf as appellant.

Mr G Bartlett (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leslie George Magyar
(Appellant)

and

Ursula Frayne Catholic College
(Respondent).

No. 610 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER P E SCOTT.

4 September 1997.

Order.

THIS matter having come on for hearing before the Full Bench on the 9th and 10th days of June 1997 and the 22nd and 23rd days of July 1997, and having heard Mr L G Magyar on his own behalf as appellant and Mr G Bartlett (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 4th day of September 1997 wherein it was found that the appeal should be dismissed, it is this day, the 4th day of September 1997, ordered that appeal No 610 of 1997 be and is hereby dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leslie George Magyar
(Appellant)

and

Ursula Frayne Catholic College
(Respondent).

No. 610 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER R N GEORGE.
COMMISSIONER P E SCOTT.

18 June 1997.

Order.

THIS matter having come on for hearing before the Full Bench on the 9th and 10th days of June 1997, and having heard Mr L G Magyar on his own behalf as appellant and Mr G Bartlett (of Counsel), by leave, on behalf of the respondent, and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 18th day of June 1997, ordered and directed as follows—

- (1) THAT the application by the appellant herein to adduce new evidence be and is hereby dismissed.
- (2) THAT the application by the appellant herein to amend the grounds of appeal to insert an additional ground of appeal to read as ground 16 as follows—

"The appellant was denied information that had it been made available to the appellant would have enabled the appellant to call into

question the credibility of some of the evidence of key witnesses for the respondent.”

be and is hereby dismissed.

- (3) THAT leave be and is hereby granted to the appellant herein to amend the grounds of appeal to include new grounds 16, 17 and 18 as follows—

“16. The Commissioner wrongly placed reliance on evidence from Mrs Parker which relied on reports from Mrs Johnson when Mrs Johnson was not called to give evidence.

17. The appellant contends that much of the evidence presented by the respondent’s witnesses was inconsistent, unsubstantiated and vague to the point that the credibility of their evidence is highly questionable.

18. The appellant contends that the employer conducted themselves in a manner which destroyed or seriously damaged the relationship of trust and confidence between employer and employee.”

- (4) THAT time be and is hereby extended to and including the 21st day of April 1997 for the appellant herein to file and serve appeal books.

- (5) THAT the hearing and determination of appeal No 610 of 1997 be and is hereby adjourned to 10.30 am on Tuesday, the 22nd day of July 1997 and Wednesday, the 23rd day of July 1997.

By the Full Bench

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Minister for Education and The Director General of the
Education Department of Western Australia
(Appellants)

and

The Civil Service Association of Western Australian (Inc).
(Respondent).
No. 477 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER P E SCOTT.

14 August 1997.

Reasons for Decision.

THE PRESIDENT: This is an appeal by the appellants against the decision of a member of the Commission, sitting as a Public Service Arbitrator (hereinafter referred to as “the Arbitrator”), made on 19 February 1997 and corrected on 21 February 1997 whereby he made the following orders—

- “(1) THAT the Honourable the Minister for Education grant permanency to temporary Level 1 ministerial employees employed in schools continuously for at least two years.
- (2) THAT the Director General, Education Department grant permanent status to all Level 1 contract and temporary public servants with two years’ continuous service.”

The appellants now appeal against that decision on the following grounds—

- “1. The Public Service Arbitrator erred in law in deciding that the Public Sector Management Act 1994 (“the Act”) did not require the Director General of the Education Department of Western Australia (“the Director General”) when appointing a person as a permanent officer under the Act to only appoint that

person to a vacant office, post or position in the Education Department.

2. The Public Service Arbitrator erred in law in deciding that the Act did not require the Director General when appointing a person as a permanent officer under the Act to only appoint that person in accordance with approved procedures.
3. The Public Service Arbitrator erred in law in holding that the undertakings to appoint ministerial officers and public service officers to permanency should be enforced in circumstances where they required the Minister for Education and the Director General to act in a way contrary to the provisions of the Act in that—
- (a) The Minister for Education would be appointing persons other than in accordance with the Public Sector Standards made under section 21 of the Act which are to be complied with by the Minister for Education pursuant to section 9 of the Act;
- (b) The Director General would be appointing persons other than in accordance with approved procedures;
- (c) The Minister for Education would be appointing persons other than in accordance with the Public Sector Standards made under section 21 of the Act which are to be complied with by the Director General pursuant to section 9 of the Act.
4. The Public Service Arbitrator should have held that—
- (a) the practice of permanently appointing public service officers without regard to approved procedures and without making appointment to vacant offices was in breach of the Act;
- (b) the practice of permanently appointing ministerial officers without regard to Public Sector Standards was in breach of the Act;
- (c) the practices referred to in sub-paragraphs (a) and (b) were void on grounds of public policy;
- (d) the Commission is not empowered to, or alternatively should not, by its Order require a person to act contrary to the Act.
5. In the alternative, the Public Service Arbitrator should have held that the practices referred to in paragraph 4(a) and (b) should be adhered to by the Minister and Director General until the Education Department of W.A.—Civil Service Association of W.A. Enterprise Bargaining Agreement 1996, PSA AG 7 of 1996, ceases to have effect.
6. The Appellant seeks orders that—
- (a) The appeal be upheld;
- (b) The decision of the Public Service Arbitrator be quashed.”

BACKGROUND

This matter came before the Arbitrator by way of an application by the respondent organisation seeking the Commission’s assistance in resolving a dispute about the Department of Education’s “delay in making longstanding L1 temporary employees permanent”.

It was not in issue between the parties that, by letter of 29 January 1996, the Education Department gave an undertaking to the respondent organisation to grant level 1 status to all contract and temporary public servants with two years’ continuous service employed in the Department. In March 1996, 19 such employees were made permanent.

By letter dated 28 March 1996, and as part of the terms of settlement of an enterprise bargaining agreement between the parties, the Education Department agreed to grant permanency to long term temporary ministerial officers employed in schools. The criterion for granting permanency was that they must have been employed continuously within the Department for at least two years.

The enterprise bargaining agreement was registered on 21 May 1996 as “The Education Department of WA (CSA) Enterprise Bargaining Agreement 1996, No PSA AG 7 of 1996”.

In late 1996, the Education Department was advised by the Crown Solicitor's Office that the Education Department's practice of appointing public service officers and ministerial employees without regard to merit, selection requirements and without making appointments to vacant positions was in breach of the Public Service Management Act 1994 (hereinafter referred to as "the PSM Act"). As a result, the Department informed the respondent organisation that the practice could not continue. The respondent organisation disagreed with this position.

The matter then came before the Arbitrator, with the respondent organisation seeking an order requiring the Education Department to honour its undertaking.

There are and were two classes of employees involved. One class consists of those appointed under s.7(1) of the Education Act 1928 (as amended), who are appointed under and subject to Part 3 of the PSM Act as public service officers. The other class consists of those employees other than public service officers who are appointed by the Minister, the firstnamed appellant, under s.7(2) of the Education Act 1928 (as amended). Both sets of employees were the subject of this application.

It was not in issue before the Arbitrator or before the Full Bench that the PSM Act applied to all of the employees involved. In relation to the public service officers, the Arbitrator held (construing s.64 of the PSM Act) that unless a binding award, order or industrial agreement under the Industrial Relations Act 1979 (as amended) permits it, if the Director General exercises her discretion to appoint a person as a public service officer on a full-time basis for an indefinite period as a permanent officer, the appointment must be in accordance with the approved procedures and the Arbitrator would order these employees to be appointed.

As to the situation with employees who are able to be appointed by the Minister, the Arbitrator held that the PSM Act enables their appointment as employees of the Education Department. Such a view, he said, was taken in *SSTU v Minister for Education 74 WAIG 3153*, *SSTU v Minister for Education 75 WAIG 843 (FB)*, and also *Minister for Education v SSTU 75 WAIG 2677 (IAC)*. However, the question of the effect of the PSM Act was not before the Commission or the Industrial Appeal Court in that matter or those appeals.

The Arbitrator held, too, that s.64(1) of the PSM Act is expressly subject to the orders of the Commission. The Commission, having found that there was such a power, went on to find that the equity, good conscience and substantial merits of the case required him to make the order sought, observing that the Arbitrator should be slow to allow a party who freely gave an undertaking to resile from that undertaking. That is a view with which I would strongly concur.

I should observe that the undertaking was given before advice was received from the Crown Solicitor's Office. I should also observe that there were, in existence, approved procedures applying to both s.64(1)(a) and s.64(3)(a) of the PSM Act, at the time when the undertaking was given.

The Arbitrator, however, noted that the provisions seemed to refer to "where a vacant public service office is to be substantively filled".

SUBMISSIONS ISSUES AND CONCLUSIONS

Since this appeal turned upon the interpretation of s.64 of the PSM Act, I now reproduce the same hereunder—

- "(1) Subject to this section and to any binding award, order or industrial agreement under the *Industrial Relations Act 1979* or any workplace agreement made under the *Workplace Agreements Act 1993*, the employing authority of a department or organization may in accordance with approved procedures appoint for and on behalf of the Crown a person as a public service officer (otherwise than as an executive officer) on a full-time or part-time basis —
- (a) for an indefinite period as a permanent officer; or
 - (b) for such term not exceeding 5 years as is specified in the instrument of his or her appointment.
- (2) An appointment under subsection (1) shall be to such level of classification and remuneration as is determined by the relevant employing authority —
- (a) in accordance with approved procedures; and

- (b) as being appropriate to the functions to be performed by the person so appointed.
- (3) The employing authority of a department or organization shall —
- (a) in accordance with approved procedures; and
 - (b) at the time of the appointment of a person under subsection (1) or, if that employing authority considers it impracticable to make the appointment concerned at that time, at a later time,
- appoint the person to fill a vacancy in an office, post or position in the department or organization.
- (4) Subject to subsection (5), a person appointed under subsection (1) (b) cannot apply for an appointment under subsection (1) (a) unless the relevant vacancy has first been advertised in a daily newspaper circulating throughout the State.
- (5) Subsection (4) does not apply to a person —
- (a) appointed under subsection (1)(b); and
 - (b) having, or occupying an office, post or position having, the lowest level of classification at which persons of the same prescribed class as that person are at the relevant time recruited into the Public Service.
- (6) The employing authority of an organization shall not make an appointment under subsection (1) unless the written law under which the organization is established or continued authorizes or requires the appointment or employment of public service officers for the purposes of that organization.
- (7) Nothing in this section prevents a public service officer who holds an office, post or position in one department or organization from being appointed, whether by way of promotion or otherwise, to an office, post or position in another department or organization."

The appellants' case was that the agreement should not (and, indeed, could not) be enforced because the agreements required the appellants to act contrary to the provisions of the PSM Act and the approved procedures and standards established thereunder.

Under the approved procedures, where a public service office is to be substantively filled, other than by the movement of a person without promotion, permanent appointment to that office should only occur following the advertisement of the vacancy in the Public Service Notices (see Public Sector Standards, Western Australian Government Gazette, Friday, 1 September 1995, pages 4058-4060, and as amended).

It was submitted that public sector standards in human resource management were gazetted on 1 September 1995 and that these standards provide for positions within the public sector to be filled through an open merit based selection process, and it was therefore inconsistent with those standards to simply grant permanence to a person.

Further, as I understand it, it was proposed to appoint these employees but not to vacancies, as the section requires.

It was not, as I understood it, in issue that the relevant requirements of s.64 of the PSM Act had not been complied with.

As I understood the case for the respondent organisation, it was held by the Arbitrator that s.64 did not require those requirements to be complied with where there was an order, award, etc. of the Commission under the PSM Act. (It was not, I say in parenthesis, suggested that the Workplace Agreements Act 1993 applied to this appeal).

The appellants' case was this. When the Minister appoints persons under s.7(2) of the Education Act 1928 (as amended) he is bound by the PSM Act, because he is part of the public sector as defined in s.3 of the PSM Act, because that definition includes ministerial offices and non-SES organisations and the Minister is a non-SES organisation.

S.64 of the PSM Act does not apply to officers appointed by the Minister. That is because such officers are not "public service officers". "Public service officers" are defined to mean—

"executive officer, permanent officer or term officer employed in the Public Service under Part 3;"

The “public service” means “Public Service as constituted under section 34”.

S.34 of the PSM Act provides as follows—

“The Public Service is constituted by —

- (a) departments;
- (b) SES organizations, insofar as any posts in them, or persons employed in them, or both, belong to the Senior Executive Service; and
- (c) persons employed under this Part, whether in departments or in the Senior Executive Service in SES organizations, or otherwise.”

The core of the argument was this. It is contrary to public policy to allow the will of Parliament to be defeated by an arrangement which is prohibited by legislation; this was very much the case in this matter because the requirements of the PSM Act and the approved procedures and standards established under it are imposed in the public interest.

Further, so the submission went, the fundamental error in the decision of the Arbitrator was his finding that the words “Subject to ... any binding award, order or industrial agreement under the Industrial Relations Act 1979” constituted a power for the Arbitrator to require the appointment of persons as public service officers.

It was submitted, too, that the agreement ought not to be enforced on the grounds of public policy (see Initial Services Ltd v Putterill and Another [1968] 1 QB 396 at 410 (CA) per Salmon LJ). That case is authority for the proposition that the law will not lend assistance to anyone who is proposing to commit and to continue to commit a clear breach of statutory duty imposed in the public interest.

However, the primary task is the interpretation of the statute. S.64 of the PSM Act must be read in the context of the whole of the Act. I propose also to construe the section, ascribing to the words of the section their ordinary and natural meaning, unless to do so would result in an ambiguity, absurdity or ascribe to the section a meaning which is not consonant with the tenor or purpose of the PSM Act (see ALHMWU v AFTPI (Appeal No 338 of 1997) (unreported) decision delivered 9 July 1997 (FB) and the cases cited therein, and Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation [1980-1981] 147 CLR 297 (HC)).

S.64 of the PSM Act confers a power on the employing authority of a department or organisation to, in accordance with approved procedures, appoint for and on behalf of the Crown, a person as a public service officer (but not as an Executive Officer). Such appointments and the power to make them are, also, further regulated by s.64(1).

An “employing authority” is defined in s.3 of the PSM Act as follows—

““employing authority” has the meaning given by section 5;”

An “organization” is defined in s.3 to mean a “non-SES organization or SES organization”.

A “department” means a department established under s.35 (see s.3).

The power to appoint is specifically prescribed to be “subject to this section and to any binding award, order or industrial agreement under the Industrial Relations Act 1979”.

The respondent organisation’s submission in effect was that the exercise of the power conferred by s.64 of the PSM Act was subject to any order, etc, of the Commission and that, therefore, the Commission had power to make an order requiring an undertaking which would effect appointments not in accordance with s.64.

The submission for the appellants was that this could not occur. The word “and” in the initial words of the section “Subject to this section and to any binding award, order or industrial agreement”, it was submitted, was conjunctive. Thus, an appointment under s.64 of the PSM Act could only be made subject to the provisions of the section and to any binding award, order, etc, not subject to one or the other, so the submission went.

In ordinary parlance the word “and” is used conjunctively and the word “or” disjunctively. The words “and” and “or” will not be treated by the courts as interchangeable unless the

legislature has made a mistake in the statute and the wrong conjunction has been used, or the case is one in which “and” has the effect of “or” and vice versa (see BPAustralia Ltd and Another v State of SA [1982] 31 SASR 178 at 189-191 (SC) and Associated Newspapers Ltd v Wavish [1956] 96 CLR 526 (HC)). Beyond those two circumstances, the courts will not be inclined to treat “and” and “or” as interchangeable (see Colon Peaks Mining Co (NL) and Others v Wollondilly Shire Council [1911] 13 CLR 438 (HC) and Pearce and Geddes “Statutory Interpretation in Australia” 4th Edition at pages 35-37).

In this case, the word “and” is plainly conjunctive and is not used otherwise. What s.64 of the PSM Act prescribes is that the power of appointment can be exercised only in accordance with the Act and in accordance with any binding order, award or declaration under the Industrial Relations Act 1979 (as amended). In other words, any appointment must comply with the law in the form of the PSM Act and of the orders, awards, etc, of this Commission. The PSM Act contemplates conditions of exercise of the power in addition to the prescriptions contained in s.64 not in detracting from it. “Binding”, as it is used in s.64(1), means “binding in law” (see Peter Long and Partners v Burns [1956] 3 All ER 207 (CA) and Rola Co (Australia) Pty Ltd v Commonwealth and Another [1944] 69 CLR 185 at 197 (HC) per Latham CJ).

An order could not be “binding” within the meaning of s.64(1) of the PSM Act if it required an appointment to be made contrary to the obligations cast upon the employing authority under s.64. If that were not so, then it would be unjust to allow the party contravening the statute to avoid his/her obligations under the same.

Put another way, the words of s.64(1), read in the context of the whole of s.64, and, indeed, the whole of the PSM Act, given their ordinary natural meaning, are clear and give rise to no absurdity. The power to appoint must be exercised subject to s.64. The section requires the power of appointment to be exercised (and, indeed, it is invalidly exercised if it is not). In the circumstances of this case, the equity might well require it, however.

I am not persuaded, on the submissions made to the Full Bench, that the substantial merits enable the Arbitrator to order the appellants to make appointments contrary to the PSM Act and therefore invalidly in accordance with approved procedures. Further, the appointment must be made subject to any binding award, order or industrial agreement under the Industrial Relations Act 1979 (as amended) or any workplace agreement under the Workplace Agreements Act 1993. That is, the person’s terms and conditions of employment will, at least, be partly governed by them. I do not read the provision as empowering the Commission to order the appointments to be made contrary to the statute.

There was no power in the Commission to make an order directing the appellants to act contrary to their obligations under s.64 of the PSM Act, and it was not therefore in accordance with equity, good conscience and the substantial merits of the case to do so.

I have a great deal of sympathy with the employees in relation to whom the undertakings were given. However, undertakings cannot be given and enforced contrary to the law.

It is not necessary to consider any other grounds of appeal.

For those reasons, however, the Arbitrator erred. The appeal is, in my opinion, made out and I would quash the decision made at first instance.

CHIEF COMMISSIONER COLEMAN: I have had the benefit of reading the draft of the Hon President’s reasons for decision. I agree with those reasons and with the order proposed.

COMMISSIONER SCOTT: I have had the benefit of reading in draft form the reasons for decision of His Honour, the President. I agree with those reasons and have nothing to add.

THE PRESIDENT: For those reasons, the appeal is upheld and the decision made at first instance is quashed.

Order accordingly

Appearances: Mr R Cock (of Counsel), by leave, and with him Mr D Matthews (of Counsel), by leave, on behalf of the appellants.

Ms D Whittaker on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Minister for Education and The Director General of the
Education Department of Western Australia
(Appellants)

and

The Civil Service Association of Western Australian (Inc).
(Respondent).

No. 477 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER P E SCOTT.

14 August 1997.

Order.

THIS matter having come on for hearing before the Full Bench on the 8th day of July 1997, and having heard Mr R Cock (of Counsel), by leave, and with him Mr D Matthews (of Counsel), by leave, on behalf of the appellants and Ms D Whittaker on behalf of the respondent organisation, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 14th day of August 1997 wherein it was found that the appeal should be upheld, it is this day, the 14th day of August 1997, ordered and directed as follows—

- (1) THAT appeal No 477 of 1997 be and is hereby upheld.
- (2) THAT the decision of the Public Service Arbitrator in PSA CR 39 of 1996 made on the 19th day of February 1997 and corrected on the 21st day of February 1997 be and is hereby quashed.

By the Full Bench

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin David Rankin
(Appellant)

and

Reed Constructions Services Pty Ltd
(Respondent).

No. 797 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER P E SCOTT.

7 August 1997.

Reasons for Decision.

THE PRESIDENT: The appellant appeals against the decision of a single Commissioner whereby on 8 April 1997 he dismissed an application by the applicant pursuant to s.29 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). The appellant alleged that he had been unfairly dismissed by the respondent and sought compensation.

FOUNDATIONS OF APPEAL

The appellant appeals against the decision of the Commission at first instance on the following grounds—

1. THE COMMISSIONER ERRED IN FAILING TO HAVE DUE REGARD TO THE FACT THAT THIS EMPLOYMENT DOES NOT RELATE TO AN AWARD—BEING A PROFESSIONAL APPOINTMENT AND APPEARED TO BE CONSTANTLY SEARCHING FOR AN AWARD OR SOME OTHER CLEAR CUT POINT OF LAW AS OPPOSED TO CONSIDERING THE EVIDENCE FROM THE POINT OF VIEW OF NATURAL JUSTICE
WITNESS THE DIALOGUE BETWEEN THE COMMISSIONER AND MR GRAYDON (P47 OF TRANSCRIPT)
2. THE COMMISSIONER ERRED IN FACT AND LAW IN NOT RECOGNIZING THAT THE CASE CITED BY THE APPELLANT IS MORE RELEVANT (sic) THAN THOSE CITED BY THE COUNSEL FOR THE RESPONDENT. I REFER TO THE CASE OF GILMORE V CECIL BROS IN WHICH A WHITE COLLAR EMPLOYEE WAS DISMISSED IN A SUMMARY MANNER SIMILAR TO THE APPELLANT'S CASE. THE CONDITIONS OF EMPLOYMENT AND THE DEGREE OF RESPONSIBILITY WERE SIMILAR.

THE CASES CITED BY THE COUNSEL FOR THE RESPONDENT ARE NOT RELEVANT (sic) FOR THE FOLLOWING REASONS:-

- A THE EMPLOYEES CONCERNED ARE ALL BLUE COLLAR OR CASUAL
- B THERE IS NO SUGGESTION OF AN IMPLIED CONTRACT FOR A PREDETERMINED TIME
- C BLUE COLLAR WORKERS DO NOT HAVE A LETTER OF APPOINTMENT WITH A PROBATIONARY PERIOD.
- D BLUE COLLAR OR CASUAL WORKERS DO NOT HAVE THE DEGREE OF RESPONSIBILITY ASSOCIATED WITH THE APPELLANT'S POSITION AND WOULD HAVE BEEN PAID FOR THE ADDITIONAL HOURS WORKED PLUS OVERTIME PENALTY RATES FOR THE EXTRA HOURS REQUIRED IN SETTING UP THIS LARGE, COMPLEX PROJECT
(17 WKS X (54-38 HRS) @ \$23.87 = \$6492)

- 3 THE COMMISSIONER ERRED IN GOING AGAINST THE WEIGHT OF EVIDENCE IN FAILING TO CONSIDER THAT—

THE DECISION TO DISMISS THE APPELLANT WAS MADE IN LATE SEPTEMBER—BEFORE THE PROBATIONARY PERIOD HAD EXPIRED AN ESTIMATOR WAS EMPLOYED DURING THE TIME THAT REEDS WERE LAYING OF (sic) STAFF (THE APPELLANT (sic) IS A QUALIFIED AND EXPERIENCED ESTIMATOR—NO EFFORT WAS MADE TO RE-DEPLOY APPELLANT EVEN THOUGH REFERENCES WERE GIVEN TO REEDS AT INTERVIEW ILLUSTRATING THAT APPELLANT HAD BEEN A FULL TIME ESTIMATOR WITH DBM CONTRACTORS)

EXHIBIT 5 CLEARLY SHOWS THAT MR MIKE HAMMIL (SITE SUPERVISOR/FOREMAN ON THE SOUTHLANDS PROJECT) WAS EMPLOYED AFTER THE APPELLANT AND CONSEQUENTLY HAD LESS SENIORITY (THE APPELLANT IS AN EXPERIENCED FOREMAN/SUPERVISOR (REFERENCES WERE GIVEN TO REEDS AT INTERVIEW ILLUSTRATING THAT THE APPELLANT HAD BEEN A FULL TIME SUPERVISOR/FOREMAN WITH HOMESTYLE) THE ARGUMENT THAT MR TRAN WAS FACING DISMISSAL IS INVALID BECAUSE HE

HIMSELF HAD SENIORITY OVER TWO OTHER CONTRACTS ADMINISTRATORS.—MR BAUMGART AND MR BREWIN.

MR JAMES DUNN WHO WAS "ASSISTED IN LEAVING" HAD ALSO SENIORITY TO MR TRAN (MR TRAN WAS NOT "ASSISTED IN LEAVING" FOR REASONS UNKNOWN) REFER TO TRANSCRIPT "WE SUGGESTED THAT HE LOOK ELSEWHERE" (REFERING (sic) TO MR DUNN)

THE ABOVE PROVE THAT MR GRAYDON'S CLAIM THAT REEDS ALWAYS OPERATE THE 'LAST IN FIRST OUT' PRINCIPLE IS INCORRECT. THE APPLICATION OF THIS INFORMATION IN ITSELF PROVE THE APPELLANT'S CASE FOR RE-INSTATEMENT OR COMPENSATION.

THE CHART SHOWING NUMBERS OF C.A.'S EMPLOYED OMITTED MR SCOTT BREWIN

THE ABOVE ILLUSTRATE THAT THE COMMISSIONER WAS INFLUENCED AGAINST THE WEIGHT OF EVIDENCE

MANY POINTS WERE HEAVILY LABOURED WHICH HAD NO RELEVENCE (sic) TO THE CASE AND GREATLY INFLUENCED THE TENOR OF THE HEARING AND, BECAUSE THE APPELLANT WAS GIVEN NO OPPORTUNITY TO SPEAK AT THE END (SEE PROCEDURAL UNFAIRNESS SECTION LATER), WERE LEFT UNCLEAR AND UNCHALLENGED

FOR EXAMPLE—

THE APPELLANT'S (sic) REASONS FOR LEAVING PREVIOUS EMPLOYMENT TO TAKE UP THE POSITION WITH REEDS WAS MISREPRESENTED—THE APPELLANT'S POSITION WAS SECURE (COLLIER ARE STILL TRADING STRONGLY AND EMPLOYEES STILL EMPLOYED. THE CASE OF MR JOHN MELIA WAS GIVEN BUT NOT REPORTED IN THE 'REASONS FOR DECISION'

THE NORMALLY EXPECTED SALARY OF THE APPELLANT WAS INCORRECTLY REPORTED BY MR STALLEY AS \$40000-45000.

THE 'GENEROSITY' OF REEDS IN GIVING 2 WEEKS' NOTICE IGNORED THE FACT THAT IT WAS IN THEIR COMMERCIAL INTEREST TO LEAVE THE APPELLANT ON SITE UNTIL THE COMPANY CHRISTMAS CLOSE DOWN.

THE COMMISSIONER EXERCISED (sic) A DEGREE OF PROCEDURAL UNFAIRNESS IN THAT—

EXHIBITS PRODUCED BY COUNSEL FOR THE RESPONDENT WERE NOT HANDED TO THE APPELLANT AND CONSEQUENTLY THE APPELLANT WAS DENIED ACCESS TO EVIDENCE AND COULD NOT REBUFF THE ARGUMENTS TENDERED BY MR SMETANA AFTER THE MID DAY BREAK

REFERENCE IS MADE TO PAGE 40 OF THE TRANSCRIPT." MR RANKIN IS TO HAVE THE FINAL SAY"

REFERENCE..PAGES 74 AND 74a—MR RANKIN WAS NOT INVITED TO SPEAK AT THE END"

BACKGROUND

The background to the appeal is this. The appellant is a qualified quantity surveyor. He had, before he entered employment with the respondent, been employed by Collier Homes in the building and/or construction industry. Because of some uncertainty over the future of the employer, he replied to a newspaper advertisement placed by the respondent in a newspaper. That advertisement invited applications for the position of contracts administrator. At all material times, the respondent was a construction contractor.

The terms and conditions of appointment and the offer and acceptance appear in a letter from the respondent dated 20 August 1996, which was accepted by the appellant on 26 August 1996.

The appellant's employment was not covered by any award. The appellant commenced employment with the respondent on 14 August 1996. His contract of employment was not for a fixed term; however, both parties anticipated that the employment would be for the life of the "Southlands Boulevard Redevelopment Project" (hereinafter referred to as the "Southlands Project"). That project was expected to be completed in 15 months.

The respondent's project manager was Mr John Stalley, who gave evidence in the proceedings. The contracts administrator is, according to the evidence, effectively the assistant to the project manager.

It was proposed that, once the project was completed, there would be further work for the appellant, provided that the respondent was able to secure new contracts.

In or about September/October 1996, Mr Garth Thomas Graydon, the respondent's construction manager, who also gave evidence in these proceedings, informed Mr Stalley that due to a downturn in work it was his intention to transfer Mr John Tran, another employee of the respondent, from New South Wales. He told him that Mr Tran, who was a contracts administrator, would occupy the position of contracts administrator on the Southlands Project.

In November 1996, after it became clear to Mr Stalley that the work available was diminishing and that attempts to obtain new contracts had failed, he informed employees engaged on the Southlands Project, including the appellant, of this situation.

On or about 3 December 1996, Mr Graydon confirmed with Mr Stalley that Mr Tran would be transferred from New South Wales to Perth. Mr Graydon also confirmed that Mr Stalley would have to terminate the appellant's employment. At this time, the appellant had been an employee of the respondent for over three months.

On either 3 or 4 December 1996, Mr Stalley informed the appellant that his employment would have to be terminated. Mr Stalley explained that he would have to terminate the appellant's employment because of a substantial decrease in work available; as a result, a number of positions had become redundant, and using the last on first off "principle", the appellant was one of those who had been "identified as being surplus to requirements".

There was a discussion about what notice of termination would be given and when that notice could expire. The appellant asked whether notice might expire after the Christmas break. That request was complied with.

As a result, on or about 10 December 1996, Mr Stalley confirmed that the appellant would be given two weeks' notice commencing on 17 December 1996 and expiring on 31 December 1996.

On 11 December 1996, Mr Tran commenced work in Western Australia in the position formerly occupied by the appellant.

The appellant ceased work on 19 December 1996, but was paid up to and including 31 December 1996. In the meantime, Mr Stalley invited the appellant to use the respondent's facilities to attempt to obtain alternatively employment. At the time when this matter was heard at first instance, the appellant was unable to obtain full-time employment, even though he had made about 40 applications or approaches in an endeavour to find such employment. At the time, too, when the matter was heard, however, the appellant was engaged in casual work.

REASONS FOR DECISION OF THE COMMISSION AT FIRST INSTANCE

The Commission at first instance summarised the appellant's grounds for claiming that he was unfairly dismissed as follows—

- (1) The appellant "left his previous employment with the respondent", having been given to understand by the respondent that the employment would be for at least 15 months.
- (2) The respondent should have obtained further contracts to avoid the need to retrench employees or

should have used contract administrators as estimators as he alleged had occurred in the past.

- (3) His replacement by another employee was not based upon impartial considerations and failed to take into account his age, experience and the fact that he was a locally based employee.

The Commission found as follows—

- (1) There was no doubt that when the appellant applied for the position from which he was terminated, both parties expected the employment to last for at least 15 months. This view was reinforced after he commenced employment.
- (2) The contract was not, however, for a fixed term.
- (3) The respondent had experienced a significant downturn in business (see exhibit S2).
- (4) In determining who should be laid off, the respondent adopted a first on last off approach, a practice generally followed in the construction industry.
- (5) That at the time of the termination of his employment, the appellant had been employed by the respondent for four months, whilst Mr Tran had been employed for 18 months (see exhibit S5).
- (6) The Commission dealt with evidence and submissions from the appellant that Mr Tran had been given favourable treatment and that his retention ahead of others, including the appellant, was not the result of impartial consideration. In this connection, the appellant pointed to two longer serving contract administrators who had left the employ of the respondent while Mr Tran was retained. The Commission clearly accepted the evidence of Mr Stalley that these gentlemen had found other work and resigned after becoming aware of the potential consequences of the respondent's inability to obtain new contracts.
- (7) That the decision to terminate the employment of the appellant was based upon "the operational requirements" of the respondent which resulted in a situation of redundancy. The Commission referred to *Gilmore and Another v Cecil Bros and Others* 76 WAIG 4434 at 4444 (FB) where the Full Bench cited the dicta of Lee J in *Nettlefold v Kym Smoker Pty Ltd (unreported) delivered 4 October 1996 (No T195/1334) at pages 5-6 (FC)*.
- (8) The Commission also found that—
- (a) When the appellant was appointed to his position the number of direct employees was relatively high and did not reflect the fact that the work of the company was in a downwards trend.
- (b) The position was exacerbated by the fact that the respondent had been unsuccessful in a number of tenders which it had submitted for new work.
- (9) In the circumstances, the actions of the respondent were necessary to advance the undertaking and were "consistent with the management of the undertaking that meets the employers obligations to employees".
- (10) That the evidentiary onus was on the party alleging unfairness in the selection or termination of employment to show by specific comparison with other employees that the selection was unfair had not been discharged.
- (11) That the dismissal was not unfair because—
- (a) Mr Stalley kept the appellant informed of the respondent's attempts to attract new work.
- (b) As soon as Mr Graydon confirmed on 3 December 1996 that Mr Tran was to be transferred from New South Wales due to a lack of work, Mr Stalley informed the appellant of this and discussed with him the reasons for the decision and what notice would be given.
- (c) The appellant's request that notice be deferred was granted.
- (d) No breach of any law was established.

SUBMISSIONS, ISSUES AND CONCLUSIONS

The decision appealed against is a discretionary decision as that is defined in *Norbis v Norbis* 65 ALR 12 (HC).

The Full Bench cannot interfere with that decision unless the appellant establishes that the exercise of the discretion at first instance miscarried and establishes this in accordance with the well known principles in *House v The King* [1936] 55 CLR 499 (HC). If the appellant establishes that the exercise of the discretion miscarried, then the Full Bench may substitute its decision for that of the decision at first instance.

The facts were not, for the most part, in dispute in this appeal.

First, it was alleged that the Commission at first instance erred in failing to have due regard that the employment was not an award rated employment, and that the Commission erred in searching for an award or a clear cut point of law instead of "considering the evidence from the point of view of natural justice".

The dialogue at page 47 of the transcript at first instance (hereinafter referred to as "TFI") was cited in support of this point. I must say that on a fair reading of that page, and, indeed, of all of the evidence, it does not at all give rise, in my opinion, to any conclusion that the Commission was influenced by the fact that this was an award covered contract of employment and the Commission recognised that no award applied. The Commission clearly found to the contrary. Further, upon a consideration of all of the reasons for decision, this ground is not borne out. Indeed, in addition, I have difficulty seeing that this ground would constitute an error, even were it established.

Next, it was submitted that the Commission erred in fact and in law in relying on *Gilmore and Another v Cecil Bros and Others* (op cit) (FB), which the appellant submitted was a decision relating to blue collar workers whose case, to put it briefly, was different from his. In fact, *Gilmore and Another v Cecil Bros and Others* (op cit) (FB) was not a case relating to blue collar workers. Mr Gilmore belonged to that class of workers who might be said to belong to the executive class.

In fact, as I have said above, the Commission relied on *Gilmore and Another v Cecil Bros and Others* (op cit) (FB) and *Nettlefold v Kym Smoker Pty Ltd* (op cit) (FC) and the dicta therein to hold that the dismissal of the appellant was an operational requirement within the meaning of the then s.23AA of the Act. To do so was correct. No error has been established as submitted in that respect.

By ground 3, it was alleged that the Commission erred in giving, against the evidence and the weight of the evidence in a number of instances, weight to certain matters. Firstly, it was submitted that the decision to dismiss the appellant was made in late September 1996 before the period of probation, which was part of the appellant's terms and conditions of employment, expired. As I understand the appellant's submissions, it was unfair that an early decision was made to terminate his employment when he was kept on working long hours and unaware of the decision to terminate his employment. The submission seems to have been that he was "used", in this respect. Some query was raised as to whether it was not appropriate if he were to be dismissed for him to be dismissed at the end of the probationary period. However, it is fair to say that there was no complaint as to the quality of his work.

The evidence which was accepted by the Commission was that whilst a decision was reached in September/October 1996, this was not a final decision, and whether the decision was final or not depended on the respondent obtaining other contracts, which, in the end, it did not do. It was only after the other contracts were not obtained that on 3 or 4 December 1996 Mr Stalley was advised by Mr Graydon that the decision to terminate the appellant's employment was confirmed. It was open, on the evidence, to make such a finding, and I am not satisfied that any unfairness arose from those facts. In any event, it is difficult to see that those facts tainted the termination.

The submission also canvassed an allegation that "last on first off" was not always followed as a "principle". In other words, the submission was that the decision was a partial one and that the appellant's employment was terminated not because of the application of last on first off principle, but because

of some favouritism directed to Mr Tran. There is no direct evidence of any favouritism for Mr Tran.

It was submitted by the appellant that one Michael Hammil, a site supervisor/foreman on the Southlands Project, was employed after the appellant was employed, but was not in fact dismissed at the time. Mr Hammil, so the submission went, had less seniority in an area where the appellant was experienced but was not dismissed. There was no reference to Mr Hammil at first instance in this context, although he was referred to in the exhibits which set out the period of service of a number of relevant employees. In any event, Mr Hammil was not employed as a contracts administrator, as Mr Smetana submitted to us. It is quite clear, on the evidence, that the appellant's position was taken up by another contracts administrator.

In December 1996, Mr Tran had completed a project and the respondent was looking for something for him to do, on the evidence of Mr Graydon. There was also evidence from Mr Graydon that the respondent wanted to keep longstanding employees. There was further evidence from him that three people in New South Wales had left at or about the material time. Mr Peter Inkpen gave notice and left, Mr James Dunn gave notice and left when it was clear that there was not likely to be any further work, and Mr Peter Baumgart went into Mr Peter Inkpen's project. It was submitted that it was wrong to say that Mr Tran was facing dismissal because he had seniority of Mr Baumgart who was not dismissed. In fact, according to exhibit S5, Mr Baumgart had 1.47 years employment with the respondent and Mr Tran 1.50. Both, however, were greatly senior to the appellant in service. Mr Hammil had 0.36 of a years service and Mr Scott Brewin 0.69, according to exhibit S5, although it is not clear what Mr Scott Brewin's occupation was and whether he was a contracts administrator.

What occurred was, as Mr Graydon said, that the respondent wanted to retain the more senior contract administrators, and Mr Tran was plainly far senior to the appellant in terms of service.

As to the submission that the appellant could have been transferred to the position of estimator, there was uncontroverted evidence that the respondent did not transfer contract administrators to estimator positions. Mr Stalley said this in evidence (see page 68 (TFI)), and it seems to have been accepted.

The complaint was that Mr Graydon's claim was that the respondent always operated on a last on first off principle and that on the evidence Mr Graydon's assertion was not correct. There was therefore no reason why, as I understood the appellant's submission, the appellant could not have been retained in employment as a matter of fairness. Why the appellant left Collier Homes was not at all relevant to whether his dismissal was unfair or not, and was not found by the Commission at first instance to be so. The appellant did, however, in evidence say that the respondent was a "better more secure bet", and that the parent company, Smith Corporation, did, at the material time, have serious financial problems.

If the salary were erroneously stated in evidence, which was also alleged, then this was not relevant to whether the dismissal was unfair or not, nor to this appeal.

It was also submitted that the respondent was not generous in giving the appellant two weeks' notice because it was in their commercial interest to leave the appellant on site until the company's Christmas close down. However, the uncontroverted evidence was that this was done at the appellant's request and there was some fairness demonstrated by the respondent in so doing, it was open to find. Further, there was no evidence that to do so was to the company's commercial benefit, and I am not persuaded otherwise that it was.

I come now to the submission that the appellant was denied procedural fairness by the Commission. It was submitted that exhibits produced by Counsel were not handed to the appellant, and consequently the appellant was denied access to the evidence and could not rebut the arguments of the respondent after lunch on the day of the hearing. I understood that these submissions really related to authorities relied on by Counsel for the respondent. That is what the appellant's submissions seemed to say. I do not think that there is any duty to require that authorities be made available to the other side, except by the practice of the Commission. In any event, I can see nothing within the principle in *Stead v SGIC* [1986] 161 CLR 141

(HC) which might lead me to the view that the result would in any way have been different had such authorities been handed to the appellant earlier.

The law has, in any event, been widely canvassed before this Commission on appeal (see *Twist v Randwick Municipal Council* [1976] 136 CLR 106 (HC)).

The appellant took us to page 40 (TFI). There the question of whether the appellant wanted to make any comment by way of reply was raised by Counsel for the respondent. The Commission at first instance said—

"I did ask him whether he wished to say anything about the matters raised with him in cross-examination and he said no."

The Commission declined to let Mr Smetana make a closing submission since the appellant had the "final say" (page 40 (TFI)).

At page 40 (TFI) the Commission said in answer to a submission from Mr Smetana that he make his submissions at the end of his case—

"Well, you see, if I do that, I then have to give Mr Rankin an opportunity to make an address after you have completed. What you're suggesting is a more sensible procedure than that prescribed under the regulations in my view, but the regulations say what they say, and if I allow you that opportunity without it being arranged beforehand, and the procedure allowing Mr Rankin to have the final say will mean he's prejudiced."

However, the appellant was not offered the opportunity "to have the final say" (see page 75 (TFI)).

Regulation 77(1) and (2) of the Industrial Relations Commission Regulations 1985 (as amended) provide—

"(1) Subject to subregulations (2) and (3), the procedure before the Commission, except upon an appeal to be heard by the Full Bench or the Commission in Court Session, shall be as follows—

- (a) the applicant shall state his case and then call his witnesses;
- (b) unless the Commission otherwise permits, the examination in chief may be conducted by not more than one person on behalf of the applicant, and the cross-examination may be conducted by not more than one person on behalf of each respondent;
- (c) the applicant shall be allowed to re-examine but the re-examination shall be confined to matters arising out of the cross-examination;
- (d) the case for the applicant shall then close;
- (e) the respondent shall then state his case and call his witnesses and paragraphs (b), (c) and (d) shall apply with such modifications as are necessary; and
- (f) the applicant may then address and call witnesses in respect of any counter-proposal of the respondent.

(2) The procedure in subregulation (1) may be modified or varied by the Commission where the Commission considers it just or expedient so to do."

The Commission is required to afford natural justice, and that includes affording reasonable opportunity to the parties to put their cases. The appellant should have been offered an opportunity to address in reply under regulation 77 of the Industrial Relations Commission Regulations 1985 (as amended). However, having considered his case in detail on appeal, I am not at all satisfied that the result would have been any different had he done so, within the principle in *Stead v SGIC* (op cit) (HC). Indeed, it would not have been (see, too, *Twist v Randwick Municipal Council* (op cit) (HC)). The matter has been well canvassed, in any event, before the Full Bench.

In conclusion, I would say as follows.

As the Commission at first instance correctly observed, quoting what Franklyn J said in *Gromark Packaging v FMWU* 73 WAIG 220 at 224 (IAC)—

"On the evidence accepted by the Commissioner the workforce was reduced because there was labour in excess of that reasonably required to perform the work

available to the employer. That reveals a situation of redundancy, leaving for decision the selection of specific workers for termination of their employment to relieve that situation.”

As a matter of fact, that was clearly the case here, on the evidence, and the Commission was entitled to so find. Indeed, that it was so does not seem to be a matter in dispute.

It was open to the Commission at first instance to find that the appellant did not discharge the onus on him to establish unfairness in the selection or termination of his employment by specific comparison with other employees.

Further, it was open to the Commission to find on the evidence that the respondent attempted to obtain other contracts to avoid the need to retrench employees, a substantial number of whom it had retrenched in 1996, but was unable to do so and that a genuine redundancy existed.

It was also open to the Commission to find, as it did, that the respondent's employment would be for at least 15 months, but that economic events overtook this.

Next, it was open to the Commission to find that the appellant's replacement by an employee from New South Wales was based upon impartial considerations, given that Mr Tran had a substantially greater length of service with the company, about 15 months compared to over three months. It was therefore open to the Commission to find that whether the “last on first off” principle was strictly adhered to, and there is no real evidence that it was not, that there was a policy of retaining senior staff, which Mr Tran was, and that that could not be said to be unfair in the circumstances. I am not persuaded that the Commission denied procedural fairness to the appellant such as to require the Full Bench's intervention, or at all.

There was no error demonstrated to me in the exercise of the Commission's discretion, applying the principles in *House v The King* (op cit) (HC). It was open to the Commission to find that the dismissal was not unfair.

I have considered all of the submissions and all of the material. I have sympathy with the difficulty with which the appellant was confronted. However, that cannot be a substitute for the application of proper principles to the deciding of this appeal, as I have done. There was no other error of law established.

The grounds of appeal not having been established, I would dismiss the appeal.

CHIEF COMMISSIONER COLEMAN: I have had the benefit of reading the draft of the Hon President's reasons for decision. I agree with those reasons and with the order proposed.

COMMISSIONER SCOTT: I have had the benefit of reading, in draft form, the Reasons for Decision of His Honour, the President, and I agree with those reasons. There is one matter on which I would add a brief comment. The second ground of appeal is, in essence, that in placing reliance on certain authorities the Commissioner had erred. It is said by the Appellant that those authorities are not relevant because the classifications of employees were different from his own, and there were other differences in the circumstances of their employment and dismissal. What the Appellant says as to those circumstances is correct. However, the purpose of reference to these authorities is to extract the proper principles for dealing with particular issues. The decisions referred to in this case set out those principles for dealing with dismissal due to operational requirements. This is what makes them relevant and appropriate for consideration in this matter, regardless of the particular class of employee whose circumstances are under consideration. For this reason, there was no error in making reference to those authorities.

THE PRESIDENT: For those reasons, the appeal is dismissed.

Order accordingly

Appearances: Mr M D Rankin on his own behalf as appellant.

Mr T Smetana (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Martin David Rankin
(Appellant)

and

Reed Constructions Services Pty Ltd
(Respondent).

No. 797 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER P E SCOTT.

7 August 1997.

Order.

THIS matter having come on for hearing before the Full Bench on the 4th day of July 1997, and having heard Mr M D Rankin on his own behalf as appellant and Mr T Smetana (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 7th day of August 1997 wherein it was found that the appeal should be dismissed, it is this day, the 7th day of August 1997, ordered that appeal No 797 of 1997 be and is hereby dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,

President.

[L.S.]

**FULL BENCH—
Appeals against decision of
Industrial Magistrate—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Barrett and Tracey Barrett
(Appellants)

and

The Western Australian Builders Labourers, Painters and
Plasterers Union of Workers
(Respondent).

Nos. 677 and 678 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER C B PARKS.

4 August 1997.

Reasons for Decision.

THE PRESIDENT: These were two appeals against the decision of an Industrial Magistrate on a complaint before him.

There was one complaint, No CP 154 of 1996, which was made on 24 October 1996. By that complaint, the respondent organisation alleged that on 3 July 1996 the defendant, Ian Barrett and Tracey Barrett trading as Barrett Pty Ltd, being a party bound by Award No 14 of 1978, committed a breach thereof in that “Barrett Pty Ltd failed to make available Time Records for inspection, pursuant to Clause 28—Time Records”.

Under the heading “Name of Defendant” in the middle of the complaint there appears the following “Ian Barrett and Tracey Barrett trading as Barrett Pty Ltd”.

The particulars of the complaint are that “Barrett Pty Ltd failed to make available Time Records for inspection, pursuant to Clause 28—Time Records”.

There was another complaint made on 13 November 1996 by or on behalf of the respondent organisation, also, which appears to otherwise duplicate in its terms what the first complaint, to which I have referred, contains.

It was submitted (and it was not disputed before His Worship) that there exists and existed a company, Barrett Pty Ltd. It was accepted, too, by His Worship that Mr Ian Barrett was a director at the time when the complaint was heard, but that Mrs Tracey Barrett was not and had not been for some time.

It seemed also to be not in dispute that copies of the complaints were served at 18 Owen Road, Safety Bay, which is the residence, it would seem, of Mrs Barrett, and that Mr Barrett also received via that premises a copy of a complaint. It was not alleged that there was any service of the complaint at the registered office of the company before His Worship or before the Full Bench.

Mr Giffard, at first instance, did submit that 18 Owen Road, a residential address, was a principal place of business, but it was never claimed to be the registered office of the company, Barrett Pty Ltd.

On 19 March 1997, Mr and Mrs Barrett appeared on their own behalf separately in answer to the complaint in the Industrial Magistrate's Court at Perth. The company did not appear and was not represented.

Mr Giffard appeared for the complainant at first instance (the respondent upon these appeals), and sought leave to amend the complaints submitting that, (to paraphrase), the correct name of the defendant was Barrett Pty Ltd and that the references to Ian and Tracey Barrett were "redundant".

The second complaint to which I have referred above, was identified as a duplicate.

It was submitted by Mr Giffard, citing *The Owners of Johnston Court Strata Plan No 5493 v Dumancic 70 WAIG 1285 (IAC)*, that the application to amend was a proper one, since it was merely a matter of "getting the proper defendant's name right". The application to amend was opposed by Mr and Mrs Barrett.

His Worship delivered extempore reasons for decision (see pages 28-29 of the appeal book (hereinafter referred to as "AB")).

His Worship described the description of the defendants in the complaint "Ian Barrett and Tracey Barrett trading as Barrett Pty Ltd", and accurately, as a nonsense. His Worship observed, further, "it cannot be so legally". With that comment I also agree. His Worship observed, correctly, too, that Mr and Mrs Barrett were each a legal entity in his and her own right, as was Barrett Pty Ltd. His Worship also correctly observed that Mr and Mrs Barrett were not representing the company before him. The company, as I have said, was not represented.

His Worship also observed that, because two complaints were made "purportedly to serve on one of the two individuals, it almost reflects that the complaint that was originally made was purported to be made against each individual". His Worship then struck out the complaint made on 13 November 1996 (complaint No 154 of 1996). In doing so, again, His Worship acted correctly. Thus, there was left complaint No CP 154 of 1996, the complaint made on 24 October 1996.

His Worship observed that the company had never been served, as it had not, and that it had certainly not been served at its registered office as required by the Industrial Relations (Industrial Magistrates' Courts) Regulations 1980 (as amended) (regulation 4(2)).

His Worship then amended the description of the defendant to read "Barrett Pty Ltd" by striking out the words of "Ian Barrett and Tracey Barrett trading as", and ordered that a copy of the amended complaint be served on the company.

It has been necessary to explain in some detail what has occurred in this matter. The appellants complain, somewhat unusually, given the circumstances of this case, but no doubt they have their reasons for so doing, that His Worship erred in making the amendment which he did.

The point which we are to decide is a short point. His Worship observed (see page 29 (AB))—

"Be that as it may, even if that weren't the point, clearly the form in which the summons was before the court was

misconceived and misleading, and it wasn't apparent to all those concerned who indeed was the proper defendant before the company."

That comment does recognise a serious problem.

Apart from statute, the Industrial Magistrate, because the procedure under the Justices Act 1902 (as amended) still applies by virtue of the Industrial Relations (Industrial Magistrates' Courts) Regulations 1980 (as amended) (and see *The Owners of Johnston Court Strata Plan No 5493 v Dumancic (op cit) (IAC)*), cannot substitute a new party for a defendant unless the party so substituted waives the irregularity. There is no indication here that the party substituted, Barrett Pty Ltd, has waived the irregularity.

In this case, upon a fair reading of the complaint, it is not at all clear that the company was the person being "charged". It, indeed, is far clearer that Mr and Mrs Barrett were the "parties charged". His Worship, as I have observed, saw that as the most likely reason why two complaints were issued.

There are more frequent references to the individuals concerned and the individuals are specifically named as defendants in that portion of the complaint which requires the naming of the defendant. Plainly, of course, the defendants cannot trade under a business name as a company.

The company was not served. This is a very different case from *The Owners of Johnston Court Strata Plan No 5493 v Dumancic (op cit) (IAC)*. In this case, the company, as a separate entity, could represent itself through directors, agents, or, it could instruct solicitors. Likewise, Mr and Mrs Barrett could represent themselves separately and did. They could also, separately, instruct agents or solicitors. The company had not been served. Mr and Mrs Barrett had. His Worship recognised this separateness when he made the amendment by adjoining to enable service on the company to be effected. Mr and Mrs Barrett were served and answered the complaint. A person considering those facts, or merely reading the complaints, might well have concluded that the named defendants were the individual persons, Mr and Mrs Barrett, and that the reference to their trading as "Barrett Pty Ltd" was an error. The amendment cannot, on a fair reading of the complaint and the transcript, be said to be merely a matter of "getting the proper defendant's name right".

The learned Industrial Magistrate clearly, for the reasons which I have explained, substituted a new party for the defendants and himself acknowledged that he had done so by ordering service of the amended complaint upon the company, thus recognising its existence as a new defendant. In that he erred (see *The Owners of Johnston Court Strata Plan No 5493 v Dumancic (op cit) (IAC)* at page 1287 (by the whole Court)).

I concluded that the only thing to do, in the circumstances, is to quash the decision to amend by substituting Barrett Pty Ltd as a new defendant and remit the matter back to the Industrial Magistrate to deal with it otherwise according to law and these reasons.

The decision to strike out the second complaint, I understand, has not been appealed against, and, was, in any event, correct.

I would also, because appeal No 951 of 1997, which also came on for hearing before the Full Bench on the same day as these two appeals, and relates to the same complaint, order that His Worship hear the complaint subject to any relevant order made in appeal No 951 of 1997. That is because His Worship might otherwise proceed in error on the basis of what has been decided in these appeals, when the other appeal relevant to the decision on the complaint had not yet been decided.

The Full Bench decided accordingly.

For those reasons, it was clear that the appeals, in my opinion, should be upheld.

COMMISSIONER A R BEECH: I agree with the order to issue in this matter and shortly state my reasons for doing so.

This matter is not without its difficulties. The summons to the Defendant upon complaint names 3 possible Defendants: Ian Barrett; Tracey Barrett; and Barrett Pty Ltd. Quite apart from it being a nonsense in that form, as the Magistrate observed it was misconceived and misleading and it wasn't apparent to all those concerned who indeed was the proper

defendant (transcript Page 9). The decision of the learned Industrial Magistrate to substitute the name "Barrett Pty Ltd" will be a correct decision if the matter was simply a case of getting the proper Defendant's name right. An Industrial Magistrate cannot substitute a new party for the Defendant unless the party so substituted waives the irregularity: *Owners of Johnston Court Strata Plan No. 5493 v. Dumancic* (1990) (70 WAIG at 1287). On the facts in this case the Complainant Union served only Mr Barrett and Ms Barrett in their personal capacities at a private address. Indeed, it appears that a duplicate of the summons was obtained because the Union understood that it was serving both individually. There was no attempt to serve Barrett Pty Ltd at its registered office.

It follows that the matter that was before the learned Industrial Magistrate did not involve Barrett Pty Ltd. The situation can be contrasted with the authorities relied upon by the Union. In the *Owners of Johnston Court* matter the initial complaint was made against "The Council of Owners of Johnston Court". This was not descriptive of a legal entity capable of suing or being sued as a collective body and it was accepted by the Industrial Appeal Court that counsel appearing must have understood that he was receiving instructions to act on behalf of the body corporate. The defendant could only be the body corporate and the only entity capable of instructing the Solicitors was the Council of the corporate body. It was held that the decision of the Magistrate to allow the amendment of the name was correct. In *Sin-Aus-Bel Pty Ltd t/a the Ascot Inn v. Parfitt* (1994) 74 WAIG 2075 his Honour the Acting President distinguished between mistaken identity and misdescription in circumstances where there could be no reasonable basis on the facts of that matter for questioning to whom the Notice of Application had been directed. I note also that that decision relates to proceedings in the Commission as distinct from the Industrial Magistrate's Court. The final matter referred to by the Union is *CSA v. Health Department of Western Australia* (1996) 76 WAIG 5018 where the Industrial Magistrate agreed that the name of the defendant could be altered to read "Commissioner for Health". In that case the learned Magistrate differentiated the position with public employment where State Government departments changed their nomenclature quite frequently whilst the status of the employees themselves really changes and that in the private sector where the issue of a separate legal entity is significant. In the private sector the legal status on identity of the employer is a critical issue. In this case Mr Barrett and Ms Barrett were capable of being sued as individual persons. Barrett Pty Ltd did not appear at first instance. It had not been served. It did not consent to any substitution. Those circumstances take this outside the range of matters considered in the *Owners of Johnston Court* matter and I consider that the effect of the learned Magistrate's decision was in reality to substitute a new party for the defendant. In the absence of consent he was in error in doing so.

COMMISSIONER C B PARKS: I agree with the reasons for decision of His Honour the President and have nothing to add.

THE PRESIDENT: For those reasons, the appeals are upheld.

Appearances: Mr I Barrett on his own behalf as appellant and as agent for the secondnamed appellant, Tracey Barrett.

Ms J Harrison on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Barrett and Tracey Barrett
(Appellants)

and

The Western Australian Builders Labourers, Painters and
Plasterers Union of Workers
(Respondent).

Nos. 677 and 678 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER C B PARKS.

20 August 1997.

Supplementary Reasons for Decision.

THE PRESIDENT: Those parts of the appeals against the decision at first instance not to award costs were not in error and should not be therefore upheld. That is because, under s.83(2) of the Industrial Relations Act 1979 (as amended), an Industrial Magistrate has no power to award costs unless the Industrial Magistrate finds that the contravention or failure to comply is proved and issues a caution or imposes a penalty, or unless the Industrial Magistrate dismisses the application. The Industrial Magistrate had not reached that stage of proceedings, partly because of the decision which he made at first instance.

COMMISSIONER BEECH: I agree with the supplementary reasons for decision of the Hon President and have nothing to add.

COMMISSIONER PARKS: I agree with the supplementary reasons for decision of the Hon President and have nothing to add.

THE PRESIDENT: For those reasons, the appellants' applications for costs are dismissed

Appearances: Mr I Barrett on his own behalf as appellant and as agent for the secondnamed appellant, Tracey Barrett.

Ms J Harrison on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian Barrett and Tracey Barrett
(Appellants)

and

The Western Australian Builders Labourers, Painters and
Plasterers Union of Workers
(Respondent).

Nos. 677 and 678 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER C B PARKS.

31 July 1997.

Order.

THESE matters having come on for hearing before the Full Bench on the 28th day of July 1997, and having heard Mr I Barrett on his own behalf as appellant and as agent for the secondnamed appellant, Tracey Barrett, and Ms J Harrison on behalf of the respondent organisation, and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 31st day of July 1997, ordered and directed as follows—

- (1) THAT appeals Nos 677 and 678 of 1997 be and are hereby upheld and the decision of the Industrial Magistrate in complaint No CP 154 of 1996 made on the

19th day of March 1997, insofar as it relates to the decision to substitute the company, Barrett Pty Ltd, as a defendant, be and is hereby quashed.

- (2) THAT the appeals, insofar as they relate to that part of the said decision whereby the Industrial Magistrate dismissed the appellants' applications for an order for costs, be and are hereby dismissed.
- (3) THAT complaint No CP 154 of 1996 be and is hereby remitted back to the Industrial Magistrate to hear and determine according to law and to the reasons for decision of the Full Bench, and subject to any order made in appeal No 951 of 1997 which might affect the hearing and determination of the said complaint.

By the Full Bench

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kellerberrin Care of the Aged Committee Inc t/a Dryandra
Frail Aged Hostel
(Appellant)

and

Australian Liquor, Hospitality and Miscellaneous Workers
Union, Miscellaneous Workers Division, WA Branch
(Respondent).

No. 919 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER S A CAWLEY.
COMMISSIONER R N GEORGE.

19 August 1997.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of an Industrial Magistrate sitting in the Industrial Magistrate's Court at Perth, and made in complaint No 159 of 1996 on 23 April 1997.

The Industrial Magistrate found that the 20 alleged breaches of the Aged and Disabled Persons Hostel Award 1987, No A 6 of 1987 (hereinafter referred to as "the award") referred to in the complaint had been proven and made other orders.

GROUND OF APPEAL

The appellant now appeals against that decision on the following grounds—

1. The learned Magistrate erred in finding the employee, Lynette Summers, was employed as an "Assistant Supervisor" within the meaning of the Aged and Disabled Persons' Hostels Award 1987, No A6 of 1987.
2. Having found that Lynette Summers was not "... employed as a domestic and in particular a cleaner ...", that "... she did much more than cleaning ..." and that she "... was required to give priority to the care of a resident ...", the learned Magistrate erred in deducing from this that she was employed as an "Assistant Supervisor".
3. The learned Magistrate erred in;
 - (i) interpreting the Award by failing to ascertain the duties of an "Assistant Supervisor" at the time the Award was made;
 - (ii) failing to find that the essential elements in the role of an "Assistant Supervisor" are those of assisting in "... the overall charge of the day to day running of the hostel ..." and assisting in "... the overseeing of the daily activities of the residents."

4. The learned Magistrate erred in applying the "major and substantial employment" test as referred to in Dimitrios Doropoulos and Ors t/a Swan Dry Cleaners v Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch (69 WAIG 1290).
5. The Appellant seeks orders from the Full Bench as follows—
 - (i) that the Appeal is upheld;
 - (ii) that the decision of the learned Magistrate is varied so as to
 - (a) dismiss the complaint; and
 - (b) revoke the order for costs against the Appellant; and
 - (c) issue an order for reimbursement costs against the Respondent in favour of Chamber of Commerce and Industry of Western Australia for \$63.00;
 - (iii) alternatively to (ii)(c) above, that the matter is remitted to the learned Magistrate for determination as to costs."

Ground 5(ii)(c) and (iii) was withdrawn on appeal by the appellant.

BACKGROUND

The respondent (the complainant at first instance) made a complaint in the Industrial Magistrate's Court at Perth alleging 20 breaches of clause 18(1)(a) of the award. The breaches alleged were failures to pay an employee, one Lynette Marion Summers, in accordance with clause 18(1)(a)(v) of the award.

Clause 6 of the award contains the definition of "supervisor" as follows—

"(1) "Supervisor" shall mean an employee who is in overall charge of the day to day running of the hostel and whose duties include the overseeing of the daily activities of residents."

Clause 18(1)(a) of the award prescribes seven occupations, which are as follows—

	Base Rate	ASNA Payment	Minimum Weekly Rate
	\$	\$	\$
(i) Qualified Cook	460.90	8.00	468.90
(ii) Cook Working Alone	401.00	8.00	409.00
(iii) Other Cook	395.90	8.00	403.90
(iv) Supervisor	426.40	8.00	434.40
(v) Assistant Supervisor	403.60	8.00	411.60
(vi) Domestic	378.30	8.00	386.30
(vii) Driver	402.90	8.00	410.90"

In clause 18(2) the classification "domestic" is defined as follows—

"(2) The classification 'domestic' shall include the following: cleaner, domestic, gardener, handyperson, kitchen employee, laundry employee, pantry employee, machinist, storeperson and like classification."

There is no definition of "assistant supervisor" in the award.

The key issue before His Worship was whether Ms Summers was, at all material times, an "assistant supervisor" within the meaning of the award. It was the defendant's case before the learned Industrial Magistrate, and upon this appeal, that Ms Summers was not covered by the award.

There was a set of facts agreed at first instance (see page 131 of the appeal book (hereinafter referred to as "AB")). Ms Summers was an employee of the appellant from the beginning of the pay period ending on 2 November 1994 to 19 October 1995 (and, indeed, as the evidence reveals, from 1989). During the period she was designated by the appellant as a general assistant and paid an amount less than the rate prescribed under the award for an assistant supervisor.

The appellant was, at all material times, the operator of a hostel providing residential accommodation, catering facilities, hostel and personal care services for aged persons and received funding for this hostel under the Aged or Disabled Persons Homes Act 1954 (Cth) (as amended).

Under s.2 of that Act "hostel" is (see page 146 (AB)) defined as follows—

““hostel” means premises—

- (a) that are fitted, furnished and equipped for the purpose of providing—
 - (i) relevant care services for persons who, by reason of age or disability, have a need for such services; and
 - (ii) accommodation for persons who reside with the firstmentioned persons; and
- (b) in which such persons are accommodated exclusively for the purpose of receiving such services or accommodation, as the case may be;

but does not include—

- (c) a hospital;
- (d) a nursing home within the meaning of the *National Health Act 1953* or the *Nursing Homes Assistance Act 1974*;
- (e) an institution carried on exclusively or primarily for the treatment of mentally ill or mentally defective persons, being an institution conducted by, or in receipt of a grant for maintenance from, a State; or
- (f) premises the maintenance expenditure of which is provided for under an arrangement entered into under the *Tuberculosis Act 1948*;

“Hostel care services” is defined in s.2 of that Act as follows—

““hostel care services” means accommodation services of a kind in relation to which an approval under subsection 10A(1) is in force;”

“Personal care services” is defined in s.2 of that Act as follows—

““personal care services” means daily personal care services of a kind in relation to which an approval under subsection 10A(2) is in force;”

Appropriate personal care and hostel care services were prescribed by the then Federal Minister on 29 April 1992 (see pages 148-150 (AB)).

It is to be noted that hostel care services include assistance in the cleaning of a resident's room, provision of meals, assistance with other necessary room services, and with personal laundry, and “the provision at any time of at least one responsible person approved by the organisation who is continuously on call and in reasonable proximity to render emergency assistance to each eligible person who requires such assistance”.

The personal assistance required to be provided includes personal assistance (including individual attention, individual supervision and physical assistance), with—

- (a) bathing, showering or personal hygiene activities;
- (b) dressing, undressing, or grooming, including the fitting of artificial limbs and other personal mobility aids and sensory communication aids;
- (c) eating and drinking.

Further, it includes assisting with movement, toileting (sic), the management of continence and incontinence, and also assistance with communication.

Generally, there seem to have been about two dozen residents required to be cared for at the relevant time. Some of them suffered from dementia or Alzheimer's disease (some 40 to 50 percent according to the evidence of the general assistant, Ms Summers, who had been employed there since 1989). By definition, these persons are and were aged and/or frail and/or disabled.

The duty statements of general assistants (see pages 152-156 (AB)) demonstrate the care required to be provided. This includes supervising and prompting the showering and attendance to personal hygiene of residents, as well as assisting and/or prompting with washing, checking physical conditions, putting washing out, putting clothes away, and other duties. Those applied to at least nine residents, according to the exhibit, and were part of the written duties of one general assistant.

The undisputed evidence was that the staff at the hostel, at the material time, consisted of a supervisor, Ms Sally May Starling, a night supervisor, a relief supervisor, two general

assistants, Ms Summers and Ms Janice Fay Anderson (the latter employed since March 1994), a gardener, cook, cook's assistant and laundry person, at the time of the hearing.

The general assistants worked two types of shift, a straight shift, 7.00 am to 2.00 pm, and a split shift, 7.00 am to 12.00 noon, recommencing at 4.30 pm and ending at 7.00 pm (see pages 155-157 (AB)). Thus, one worked one shift at the same time as the other worked a split shift. They were, however, there together from 7.00 am to 12.00 noon, because those were the times when the work done under the two separate shifts coincided.

THE COURSE OF THE EVIDENCE

It is necessary to consider the evidence of the three witnesses briefly.

EVIDENCE OF LYNETTE MARION SUMMERS

Ms Summers gave evidence that her duties were to check with the night supervisor at 7.00 am, then to prompt and/or assist residents to have their showers, laying out and taking away clothes, putting out toiletries, coming back at regular intervals to check persons showering because they might have problems with memory loss, and check that they had in fact gone to the shower. There were those persons, on her evidence, who required greater care than others, including helping them out of bed, undressing them, physically getting them to the shower (and one resident to whom she referred who had a colostomy bag and required about 40 minutes assistance), helping persons under the shower, regulating the water, assisting them with washing their backs and drying them, cleaning dentures and spectacles, and putting in hearing aids. She referred to a number of things which had to be done also which the residents were unable to do, without specifying those things. There was also the question of choosing appropriate clothes, combing and shampooing hair, stripping beds which had been wet, and applying creams and talcum powder to parts of the body which required that this be done. There were also conditions such as rashes to be monitored by general assistants and reported upon to the supervisor. Abrasions and bruises were also to be observed and reported upon.

The showering process took one hour (the duty statement to which I have referred above, which appears in the appeal book, prescribes one hour and five minutes, although Ms Anderson said that it only took half an hour).

After that, residents requiring prompting were sent to breakfast. Persons who required assistance were escorted to breakfast. Between 40 and 50 percent would require assistance with showering, she said.

Then she performed duties in accordance with the weekly roster, namely stripping and changing linen on Mondays, dusting and cleaning rooms on Tuesdays, carrying various detergents and other chemicals to where they had to be carried and filling the appropriate receptacles and cutting fingernails and toenails on Wednesdays, vacuuming on Thursdays, and, on Fridays, doing a general clean-up.

She gave evidence that whilst she was doing her general duties she was on the alert for mood swings or behavioural problems and assisted residents if they had emotional problems, pacifying them or distracting them if they became upset.

There was then the task of getting the residents to tea at 10.00 am (see page 32 (AB)). Whenever the general assistants are in a room with someone, she said, they are generally required to assist with getting things or hanging things up and chatting to them as well.

At 12.00 noon residents have to be prompted or taken to lunch.

The general assistant on split shift goes off at 12.00 noon. The other who is on the straight shift remains there. The person on the straight shift delivers the washing and hangs it up or puts it away in the room of the resident. Then the dining room has to be vacuumed.

The general assistants also answer the residents' buzzers which are in their rooms.

General assistants also have to help persons who fall and get them on their feet. Ms Summers had had instructions from the local physiotherapist in how to lift persons who had fallen. Sometimes the supervisor had to take someone to the surgery

or into town and a general assistant might then be the only person there to deal with residents.

On a straight shift after lunch the laundry, kitchen and dining room were required to be cleaned.

On the split shift at 4.30 pm the tables were set up for tea by the general assistant. The residents came down at 5.30 pm and their meals were given to them. Some had to have their meals cut up and they had to be otherwise looked after while they were eating. The general assistant then stacked the dishwasher and tidied up the kitchen. At about 6.45 pm the residents were reminded to come down for a cup of tea in the dining room where it was made for them. At 7.00 pm the shift finished.

Ms Summers said that, whilst doing the cleaning, she still had to keep an eye out for what was happening in the hostel. She also said that it was an instinctive thing to do a lot of thinking for patients, especially those with dementia. She said, too, that she always had the residents' well-being as her "first priority" (see page 37 (AB)).

She referred to the supervisor's duties at pages 37-38 (AB), including administrative responsibilities, handing out medication, attending to records, paperwork, etc. It is clear that she did not perform those aspects of the supervisor's duties.

With some residents, general assistants were required to record their bowel movements.

There were 40 to 50 percent of residents with varying degrees of Alzheimer's disease and dementia, some with poor mobility, and others with behavioural problems, according to Ms Summers' evidence.

At page 39 (AB) Ms Summers gave a description of the role in relation to the supervisor, which I reproduce hereunder—

"Well, as I put it—you know—I think my — our job is sort of to be the eyes and ears of the supervisor, but because she doesn't spent (sic) a lot of time with hands-on contact with our residents, I think she relies on us quite a lot to alert her to anything whether it be mood swings or whether it be a deterioration in their mental and physical state. We go to her for advice on whether we should be worried about anything to do with the residents, and she sort of waits to hear from us. If we feel that there's something that she should know about we do not hesitate to tell her, and then she will act on it; whether she gets onto the family, or the doctor, or — there's usually conferences going on with different ones about how to follow up things that we've alerted them to."

About two years before the hearing Ms Summers did a fairly intensive one day course on dementia and aged care and had just completed another such course before the hearing of this application on 2 April 1997.

In cross-examination she gave the following evidence, summarised.

About twice a week the supervisor was not there for no more than about half an hour. The general assistants were always there together from 7.00 am to 12.00 noon, and there was always a supervisor in charge of them.

About 30 percent of residents required their hair to be brushed and their collars pulled out during the period the subject of the complaint. She reiterated that the residents' personal care was her priority. There is no doubt that, as Ms Summers said in evidence, she was responsible to a supervisor, namely Ms Starling, that she took instructions from a supervisor, and that, on her own evidence, she assisted in the overall charge of the day to day running of the hostel under the orders of the supervisor (see page 51 (AB)) in relation to the care of the residents.

There were a number of duties of the supervisor (see pages 52-54 (AB)), many of which were referred to in Ms Starling's evidence. Ms Summers specifically denied that her main function was cleaning, because, as she repeated, her first priority was the residents. However, Ms Summers said in evidence, too, that she could not dispute that sometime after she started work with the appellant the essential reason for her being there was to do cleaning and to do peripheral work, that was personal care, in the mornings. It is fair to say, of course, that this period was sometime after she started work.

Ms Summers said that the buzzers would go off three or four times a week, although there was one lady who used to

set her buzzer three or four times a day. She said that there is a requirement for general assistants to attend to the buzzers, even if the supervisor did also, evidence corroborated by Ms Anderson. On one out of four occasions a resident would have fallen when the buzzer rang.

Fifty percent of residents would require personal care with showering, Ms Summers said. She also said that it would be physically impossible for one person to attend to all of the showering in one hour.

EVIDENCE OF JANICE FAY ANDERSON

Ms Anderson was a general assistant (so designated, in any event) who commenced employment with the appellant in March 1994.

Her evidence was that she spent no more than half an hour in attending to the showering of residents. The duty statement prescribed a longer period for showering and other attentions, as I have already said.

She also said that they swapped sides with their duties ((ie) sides of the building).

She did not say how many residents could proceed by themselves to the shower. She said that the rest of the day was spent in cleaning and making beds ((ie) after the showering was done).

She and Ms Summers, she said, performed the same tasks, except that, at the material time, Ms Anderson did not cut residents' toenails or attend to "the chemicals" (see pages 77 (AB)).

Ms Anderson said that the buzzers sometimes rang hardly at all and sometimes continuously, but she would answer to see if she was needed, even if it was the supervisor's responsibility to answer the buzzers.

She agreed that bowel movements of two or three residents were recorded. She agreed that one resident required assistance to put on his or her socks. She agreed that others needed assistance with their clothing; that dirty clothing is put out of the room by general assistants; and that she suggested to residents that they not wear inappropriate or soiled clothing. She said that she did not "do" hearing aids or spectacles. She would tell the supervisor if a resident lost something or if he or she was agitated or confused. She would, for example, get their glasses for them if she was in the room and they were missing them. She would keep an eye on residents with dementia if she knew that they gone for a walk or something. She would talk to residents exhibiting confusion whilst she was in their room. However, if there was any problems she would see the supervisor. She would assess the seriousness of a situation with a resident, however. If she became aware of a bruise whilst she was cleaning a room she would go and get the supervisor. She agreed that the "res's" were her concern and by implication that she would fit her other duties around their needs. That was sought to be qualified in re-examination by a leading question, but the answer was somewhat equivocal (see page 82 (AB)). She said that she would have to attend to a resident's needs other than showering, seldom.

EVIDENCE OF SALLY MAY STARLING

Ms Starling had been supervisor of the appellant's premises since 1994. She referred to her duties as supervisor as follows—

- (a) the general running of all the happenings at Dryandra;
- (b) she and the other supervisor do "the subsidies" and the general assessment of the residents;
- (c) the supervision of the staff;
- (d) the handing out of medications for residents, the seeing to doctors' appointments and like matters;
- (e) dealing with applications by prospective residents;
- (f) wherever possible arranging activities for residents;
- (g) arranging specialist services;
- (h) organising the rosters for staff;
- (i) directing the general assistants.

Ms Starling described the main function of the general assistant as assisting with the showering in the morning (see page 86 (AB)). She went on to say in the same answer that the supervisor is able to assist with that, too, as she is with calling the residents for breakfast.

The general assistants make beds, clean the flats, and help with some washing, she said. Everyone answers the buzzers, she said. She also said that the difference between her job and that of the general assistants was that she had the responsibility for all of the care of the residents, their health and well-being. The information about needs of residents came to her from the supervisors and from general assistants.

Ms Starling also said that gardeners and cooks told her about a lot of things, especially with dementia residents, and although she conceded, it would seem to me correctly, that the cooks and gardeners would not be involved in something like dressing. It was not her evidence that cooks and gardeners were primarily responsible for assisting her in the care of the residents either.

Ms Starling agreed that it was part of the duties of a general assistant to report the mood swings of residents or matters in the general health area, including whether they had noticed a cut or a bruise on a resident. She agreed that general assistants do apply creams to part of residents' bodies where required. She agreed that the "core" of what is done at the hostel is ensuring that the personal care component of the hostel was provided in accordance with the relevant Australian government standards.

Ms Starling did concede that for those requiring personal care, if she were absent from the hostel, the responsibility would fall on the general assistants. One responsible person, of course, she agreed, has to be present at all times.

Ms Starling's evidence was that all staff attend when the buzzer rings. She agreed that if a general assistant became aware that a resident needed assistance then giving that assistance would be first priority. However, she said that she would expect that of volunteers or anyone walking down the street. I am not certain that she meant that she expected volunteers or persons walking down the street to dash into the hostel to assist residents, uninvited. She added in re-examination that it would be the role of general assistants if anything happened in the west or north corridors of the hostel to press the buzzer if they needed help.

REASONS FOR DECISION AT FIRST INSTANCE

This appeal was on the basis that His Worship erred in finding that Ms Summers was an assistant supervisor. His Worship found that she was an assistant supervisor because an assistant is a person who provides help or aid. In this case, His Worship went on to find, having regard to the definition of "supervisor", to which I have referred, that—

- (1) It is not necessary for a person to assist the supervisor in each and all of the duties required to be carried out by the supervisor before it can be said that the person is an assistant supervisor.
- (2) An assistant supervisor is not necessarily a person who is simply required to carry out some particular task at the direction of the supervisor.
- (3) An irregular, infrequent or occasional performance of a supervisor's task by a person other than the supervisor does not make that other person an assistant supervisor.
- (4) An assistant supervisor assists the supervisor or helps or aids a supervisor to carry out his/her duties.

His Worship made a number of findings of fact, expressly preferring the evidence of the sole witness for the respondent (complainant at first instance), Ms Summers, to that of a witness for the appellant (defendant at first instance), Ms Anderson (also a person designated a general assistant).

His Worship did not refer to the evidence of the other witness for the respondent, Ms Starling. If His Worship made a finding contrary to the evidence of Ms Starling in that he accepted Ms Summers' evidence, then the Full Bench cannot act on that evidence to reverse the findings, unless it was satisfied that any advantage enjoyed by His Worship by reason of having seen and heard the witness could not be sufficient to explain or justify His Worship's conclusions (see Abalos v Australian Postal Commission [1990] 171 CLR 167 (HC)).

Further, a finding of fact by a trial judge, based on the credibility of a witness, is not to be set aside because an appellate court thinks that the probabilities of the case are against—even strongly against—that finding of fact. If the trial judge's

finding depends to any substantial degree on the credibility of the witness, the finding must stand unless it can be shown that the judge has failed to use or has palpably misused his/her advantage or has acted on evidence which was inconsistent with facts incontrovertibly established by the evidence or which was glaringly improbable (see Devries and Another v Australian National Railways Commission and Another [1992-1993] 177 CLR 472 (HC)).

Ms Starling was a supervisor and Ms Anderson another person categorised as a general assistant.

His Worship applied the major and substantial employment test applied by the Full Bench in Doropoulos and Others t/a Swan Dry Cleaners v TWU 69 WAIG 1290 at 1292-1293 (FB) where the Full Bench said—

"In Ware v O'Donnell Griffin (Television Services) Pty Ltd. 1971 AR (NSW) 18 at 19, Sheldon J. held, in applying the principle of major and substantial employment, that it was not merely a matter of quantifying the time spent on the various elements of work performed by a complainant: the quality of the different types of work done is also a relevant consideration.

We advert also to the consideration of this sort of problem in Harrison v FMWU 63 WAIG 1399.

In this State, major and substantial employment and the test to be applied were considered in Diggle v Brine (op. cit.) where Woolf J. (as he then was) held, that a person who cleaned for only three hours out of an eight hour day was not a cleaner. He said, however, at page 79—

I have come to the conclusion that one cannot stamp his whole employment (and one has to get a comprehensive picture of the whole employment to say whether in fact he is to be classed as a cleaner under the award) as that of a cleaner within the meaning of the award.

In Litis v Pantelis (op. cit.), Jackson J. with whom Virtue J. agreed, said that in cases such as this, it was necessary to consider the provisions of the award and next the work actually performed to determine whether this brought the worker within any of the named categories of worker within the award. Having considered what Mr Pantelis did, Jackson J. (as he then was) looked at what he called "his essential and primary" employment. Both Jackson J. and Virtue J. considered the agreement which the worker signed as well as what he did, in that case.

In this case, we will consider the agreement into which Mrs Gardner entered, of which the advertisement (Exhibit F) is some evidence.

The most recent and most authoritative decision for the purposes of the Full Bench is that in FCU v Cary 67 WAIG 585, where the Industrial Appeal Court was called upon to decide whether the worker named in a complaint was a "clerk" for the purposes of the appropriate award. Burt J., the President, (as he then was), said at page 586—

Of course, one has regard to the substantial nature of the employment in terms of the purpose to be achieved by it, the question being, I think, very much controlled by the difference, which is not always accepted by philosophers but which serves the purposes of practical men, between ends and means. If in substance the workers job is to write and the job is done when the writing has been done he is a clerk, but if in substance, the writing done by the worker is but a step taken in the doing by him of something extending beyond it then he is not. The "substance" of the work identifies the questions being one of degree and it indicates the answer to it will be or may be, very much the product of a value judgment.

Thus, incorporated in the consideration of major and substantial employment on that authority, are questions of substantial nature of the employment, the substance of it, and the purpose to be achieved by it. One has to look at the contract or evidence of it, and obtain a comprehensive picture of the whole of the employment, to enable one to apply Burt J.'s test".

His Worship found that Ms Summers performed the following duties—

- (1) Woke up residents in the morning.

- (2) Assisted some of the residents' showering. In particular assisted some of the residents clean parts of their bodies where they could not manage to clean themselves, eg back and feet.
- (3) Ensured that the residents attended the dining room area for breakfast, lunch and tea as the case may be depending on the particular shift.
- (4) Continually monitored whether there were any changes in the physical well being of the residents. Such changes may have been physical such as bruising or grazing. Changes may also have been emotional such as mood swings. Any such changes were brought to the attention of the supervisor.
- (5) Ensured residents were properly clothed having regard to the climatic conditions of the day.
- (6) Each and every room of the various residents was equipped with a buzzer. The resident pushed a button which caused the buzzer to activate when he or she needed attention. It is accepted by the supervisor that Ms Summers as a general assistant was expected to respond to the activation of a buzzer by a resident. If the supervisor also responded then well and good and the attendance of the general assistant would thereafter not be required. If however, the supervisor did not respond and the general assistant did then depending upon the demand of the resident the general assistant may have needed to refer the matter to the supervisor.
- (7) Assisted in the personal hygiene of some of the residents, eg cleaned teeth, cut nails, combed hair, cleaned up the resident if he or she wet himself or herself and the supervisor was not present.
- (8) Assisted in recording the bowel movements of residents.
- (9) Communicated with residents from time to time to settle or soothe them given that some of the residents suffer from Alzheimer's disease and dementia to varying degrees.
- (10) Physically lifted some of the residents.
- (11) Cut food for some of the residents when they needed that help to enable them to be able to or at least comfortably be able to eat an evening meal.
- (12) Ensured rooms were clean and tidy including making beds, cleaning mirrors and sinks, emptying bins.
- (13) Attended to cleaning duties generally of all rooms in the hostel including bedrooms and involving dusting, vacuuming and mopping.
- (14) Generally assisted with cleaning in the kitchen and attended to the cleaning of dishes and cutlery.
- (15) Completed sorting of washing, removal of washing from lines and delivery of laundry to residents' rooms.
- (16) Ensured various chemicals were available, eg laundry cleaners, toilet cleaners and kitchen detergents.

In addition, His Worship went on to find—

- (1) That Ms Summers was not employed as a domestic, in particular a cleaner, with minor peripheral tasks in connection with the personal care of the residents.
- (2) That the expectations of the defendant of Ms Summers in her employment went way beyond mere cleaning and minor peripheral assistance in the giving of personal care.
- (3) That the defendant caused Ms Summers to attend a course on each and all of Alzheimer's disease and dementia, first aid and lifting people.
- (4) That the naming of her position as general assistant rather than cleaner or domestic reflected the fact that she did much more than cleaning.
- (5) That it was of crucial significance in this case that in respect of the various duties previously mentioned other than cleaning some were attended to on a regular basis and others may have potentially arisen at any time and did arise from time to time.

- (6) That looking out for changes in the residents' physical presentation and mood was on-going and was required at times contemporaneous with cleaning.
- (7) That in the context of assessing a comprehensive picture of the whole of the employment Ms Summers was required to give priority to the care of a resident, and this was important having regard to Burt CJ's test in FCU v W and M Cary t/a R W Cary Estates 57 WAIG 585 (IAC).

His Worship then found that Ms Summers was employed as an assistant supervisor, notwithstanding that the defendant chose to describe her position as something else, and notwithstanding that she did not assist the supervisor in many of the other duties of the supervisor.

CONCLUSIONS

There were several major heads of argument upon this appeal.

Mr Robertson, on behalf of the appellant, submitted, inter alia, that the learned Industrial Magistrate's discretion had miscarried in part in the decision which he made.

I would observe that the decision in complaints under s.83 of the Industrial Relations Act 1979 (as amended) as to whether there was a complaint of breach of award has been proven is not a discretionary decision. The decision depends on whether the complainant establishes, as a matter of fact and law, that a breach has been committed as that complaint alleges according to the proper standard of proof.

Secondly, the question of which evidence should be accepted was canvassed. There was no submission as such that the learned Industrial Magistrate had misused his advantage in seeing the witnesses. However, there was a submission that Ms Summers and Ms Anderson could not know the duties which the other performed because they performed them in different parts of the hostel building. However, it is after all one building and the question was what duties Ms Summers performed.

Mr Robertson submitted also that the Industrial Magistrate erred in accepting that Ms Summers' duties were as she described them. Once he accepted her evidence, however, in preference to that of Ms Anderson, then subject to any error or to his misusing his advantage (as discussed in *Devries and Another v Australian National Railways Commission and Another (op cit) (HC)*), His Worship was entitled to accept her version of what her duties were. Indeed, her evidence and the evidence of Ms Anderson and Ms Starling were, in many respects, the same.

Findings of fact made by His Worship, based on the credibility of a witness, Ms Summers, were not made in circumstances or on any basis which would lead me to conclude that the probabilities of the case were against the findings made. Indeed, as I will demonstrate, there was no indication that His Worship failed to use or palpably misused his advantage or acted on evidence which was inconsistent with facts incontrovertibly established by the evidence or which was glaringly improbable.

The fact of the matter was, on all of the evidence, that the appellant's premises was a hostel where aged and frail persons were cared for by staff under a supervisor. Both general assistants, in evidence, said, and it was open to find, that the residents were their priority.

On all of the evidence, it is clear that the general assistants were engaged in the care of aged and/or frail people, some of whom were suffering from Alzheimer's disease, dementia, some of whom were frail, forgetful and suffered emotional difficulties or were physically immobile or partly immobile, and that this care included cleaning their rooms and other parts of the hostel. The attendants to these patients when buzzers rang, by way of observation, by way of everyday help, as well as by cleaning, getting food and other assistance, fulfilled the requirement to provide care in terms of the prescriptions under the relevant Commonwealth statute.

It was open to find, on the evidence, that the general assistants were subject to the direction of the supervisor who had this overall responsibility.

There was evidence that assistance given in showering, in matters of hygiene, by observation and report, by attendance

in matters of crisis such as falls, and when, on Ms Starling's evidence, she left the hostel, the general assistants took responsibility for persons requiring "personal care" in a narrow sense. That seemed to be something of a grudging concession of Ms Starling's, but it accorded with Ms Summers' evidence.

Ms Summers' assertion that she was the "eyes and ears" of the supervisor is borne out by Ms Starling's own evidence of what general assistants did, and Ms Anderson's also, and it was open to His Worship to so find. The evidence that Ms Summers went on two courses which gave instruction in relation to Alzheimer's disease and its effects and dementia and its effects, and which evidence was not denied, is evidence of the appellant's view of the role of general assistants as something more than cleaners.

There was evidence, too, that, in assessing residents, information provided by general assistants was used. This evidence came from Ms Starling.

There was, however, nothing in the transcript of evidence from which I could conclude that in any matters of difference in evidence between Ms Summers on the one hand, and Ms Anderson and Ms Starling on the other hand, His Worship misused his advantage in observing the witnesses and preferred the evidence of Ms Summers to that of the other witnesses.

Further, Ms Starling's evidence was not so different from Ms Summers' evidence, or at least not so different so as to give rise to error, but even if it were, under the principles from *Abalos v Australian Postal Commission* (op cit) (HC), which I have referred to above, His Worship's obvious acceptance of Ms Summers' evidence was not in error.

Mr Robertson went on to submit that His Worship erred in not finding that the nature of Ms Summers' employment, which after all was the main issue in these proceedings, could best be characterised by the time she spent in cleaning duties. Of course, it was open to find, on the evidence, that in terms of time a great deal was spent in cleaning, that time was also spent putting clothes away, attending to personal care and hygiene, serving meals (on split shift), and acting as the "eyes and ears" of the supervisor, duties which did not cease while cleaning was occurring. There were other duties to which I have referred above, of course.

It was open to find throughout all of this that the general assistants were required to observe, attend, assist, and be with the residents, and to be alert and report matters to the supervisor, as well as personally care for residents in the ways which I have already described above. Some could fend for themselves better than others, of course, but essentially the business of the appellant, in law, and as a matter of fact, is and was to provide hostel and personal care to aged and/or disabled persons as prescribed. That could not and is not able to be provided by the supervisors alone, nor, on the evidence, could it be said that it was provided by the administrator, the cook, the assistant cook, the gardener, the laundry person, or volunteers off the street.

The test which His Worship was to apply in ascertaining the nature of Ms Summers' employment was that referred to in *Doropoulos and Others t/a Swan Dry Cleaners v TWU* (op cit) (FB), where the dicta of Burt CJ was quoted from his reasons for judgment in *FCU v W and M Cary t/a R W Cary Estates* (op cit) (IAC) at page 586.

In *Doropoulos and Others t/a Swan Dry Cleaners v TWU* (op cit) (FB) the Full Bench referred to the dictum of Sheldon J in *Ware v O'Donnell Griffin (Television Services) Pty Ltd 1971 AR (NSW) 18 at 19*, and I have set that dictum out in full above.

Therefore, on that authority, in assessing what the major and substantial employment of Ms Summers was, it is not merely a matter of quantifying the times spent on various elements of work performed by a complainant. The quality of the different types of work done is also a relevant consideration. If one applies that dicta as one should, and if one applies what Burt CJ said in *FCU v W and M Cary t/a R W Cary Estates* (op cit) (IAC)), as His Worship did, and as he was required to do, then Mr Robertson's submission, in the circumstances of this matter, was not valid. Ms Summers was not a cleaner. That is because cleaning, some washing, showering, being the supervisor's "eyes and ears" and the personal care of frail, physically weak, handicapped, aged persons and persons suffering from

dementia and Alzheimer's disease was the work of Ms Summers.

The work to be done was to treat the residents, their care and welfare, as a priority. It was open to find, in substance, that the work was that of a carer under the direction of the supervisor and to assist the supervisor in her responsibilities of care prescribed under the Aged or Disabled Persons Homes Act 1954 (Cth) (as amended). That was the effect of all of the evidence, particularly that of Ms Summers. In substance, the work was not to clean but to care. The cleaning, in Burt CJ's words, was merely, it was open to find, "but a step taken in the doing by (Ms Summers) of something extending beyond (the cleaning)".

It follows that His Worship was entitled to find that Ms Summers' duties were as he found them, and as I have outlined such findings above (see paragraphs (1) to (16) on pages 24-26 (supra)).

The question is then whether Ms Summers was a domestic as defined in the award. It was not submitted that she fitted any other category of domestic than cleaner. There was no submission or evidence that she might be any form of domestic not specifically referred to in the definition. Nor, with respect, could there have been such a submission.

Further, for the reasons I have just expressed, His Worship was entitled to find that Ms Summers' substantial employment was not as a cleaner with only peripheral tasks to be performed in connection with the personal care of residents. He was also entitled to find, on Ms Summers' evidence, but indeed on all of the evidence, that the expectations of the appellant went way beyond cleaning and minor peripheral assistance, for the reasons which I have already expressed. For all of those reasons, too, it is clear that, not being a cleaner, she was not a domestic.

Further, His Worship was entitled to find, on the evidence, as I have numbered his findings at pages 24-27 hereof, and as a matter of law.

The question now is, therefore, whether Ms Summers was an assistant supervisor.

I have already referred to the definition of "supervisor" in the award. Ms Starling was a supervisor in the overall charge of the day to day running of the hostel. There was no dispute about that. Her duties palpably included, on the evidence, the overseeing of the daily activities of residents, as well.

The work of the general assistants (so called) was to assist the supervisor in her duties, including the day to day running of the hostel, the *raison d'être* of which was the care of its residents. Further, as her "eyes and ears" amongst the residents, together with other duties which she performed, Ms Summers assisted the supervisor to oversee daily the activities of the residents. His Worship noted that an assistant supervisor assists the supervisor to carry out her duties. I do not think that that view can be validly disputed. Of course, an assistant supervisor would differ from an assistant to the supervisor, who, in my opinion, would assist the supervisor in the office of supervisor, but not in the discharge of the duties of the supervisor as such. For example, the secretary to a director would assist the director, but would not be an assistant director. Plainly, the assistant supervisor does not have to assist the supervisor in all or every one of his or her duties, nor, as His Worship found, is an assistant supervisor a person who is simply required to carry out some particular task at the direction of the supervisor. That was not the case with Ms Summers, of course. Ms Summers did work which the supervisor did too, for example assisting showering, picking up fallen residents, answering buzzers, observing residents, but her duties involved her direct participation in the running of the hostel from the care point of view and the overseeing of the daily activities of residents. She was an assistant supervisor and for the reasons which he expressed.

It was open to His Worship to find, for those reasons, that Ms Summers was an assistant supervisor, and he did not err in so finding.

I have considered all of the submissions, all of the evidence and all of the material before the Full Bench. His Worship did not err as submitted and the appeal is not made out. I would dismiss it.

COMMISSIONER CAWLEY: I have read the President's reasons for decision in draft form and agree with his conclusion that the appeal should be dismissed and have nothing to add.

COMMISSIONER GEORGE: I have had the benefit of reading in draft form the Reasons for Decision of His Honour the President. I agree with the Order proposed for the reasons set out therein and have nothing to add.

THE PRESIDENT: For those reasons, the appeal is dismissed.

Order accordingly

Appearances: Mr P Robertson on behalf of the appellant.
Mr D Kelly on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kellerberrin Care of the Aged Committee Inc t/a Dryandra
Frail Aged Hostel
(Appellant)

and

Australian Liquor, Hospitality and Miscellaneous Workers
Union, Miscellaneous Workers Division, WA Branch
(Respondent).

No. 919 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER S A CAWLEY.
COMMISSIONER R N GEORGE.

19 August 1997.

Order.

THIS matter having come on for hearing before the Full Bench on the 2nd day of July 1997, and having heard Mr P Robertson on behalf of the appellant and Mr D Kelly on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 19th day of August 1997 wherein it was found that the appeal should be dismissed, it is this day, the 19th day of August 1997, ordered that appeal No 919 of 1997 be and is hereby dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,
President.

[L.S.]

**PRESIDENT—
Matters dealt with—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Salvation Army trading as Graceville Womens Centre
Applicant

and

Australian Liquor, Hospitality and Miscellaneous Workers
Union, Miscellaneous Workers Division, WA Branch
Respondent.

No 1415 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

15 August 1997.

Reasons for Decision.

INTRODUCTION

THE PRESIDENT: This is an application made pursuant to s.49(11) of the Industrial Relations Act 1979 (as amended)

(hereinafter referred to as "the Act") by The Salvation Army, trading as Graceville Womens Centre, to stay the order of the Commission made in matter No CR 4 of 1997 on 28 July 1997.

An appeal was instituted by the applicant against that decision, within the meaning of s.49(11) of the Act. The appeal was lodged in this Commission on 30 July 1997.

I am satisfied that, as a party to the proceedings at first instance, and as an appellant against the decision sought to be stayed in its operation, there is sufficient interest in the applicant to enable it to make this application.

The decision appealed against was an order that W, an employee of the applicant herein, (and a member of the respondent organisation), whom the applicant had dismissed, be reinstated in the applicant's employment. I am assuming that the applicant is a legal person.

The application was opposed by the respondent, of whom W was, it would seem, at least at the material times, a member.

THE PRINCIPLES

I considered the principles which might apply to this application, and having regard to the objects of the Act and s.26(1)(a), (c) and (d), in particular, I am not persuaded on the submissions made that the bare "exceptional circumstances" test should apply to applications under s.49(11) of the Act (see CSA v WA Centre for Pathology and Medical Research and HSOA 75 WAIG 3177).

The test remains as I have prescribed it in Gawooleng Dawang Inc v Lupton and Others 72 WAIG 1310.

Re Moore: Ex parte Pillar [1991] 65 ALJR 683 (HC) per Dawson J is also a relevant authority because the necessity to maintain consistency in industrial matters is emphasised in the reasons for judgment of Dawson J.

THE ISSUES

The grounds of appeal herein refer to a particular error of fact alleged to have been committed by the Commission at first instance. There is also a general ground of appeal, ground 5, which, in effect, complains that there was sufficient evidence to justify the dismissal and that the Commission should have so found.

In the reasons for decision, the Commission at first instance was considering whether W was fairly dismissed for stealing. The Commissioner said that he reached his conclusions that he was not convinced, on the balance of probabilities, that W "took" a skirt, the property of a resident.

It might be argued that the Commission erred in one particular aspect, namely the evidence of a witness, Ms Vera Kang, as to the colour of the skirt. However, the Commission observed all of the witnesses and made the findings to which I have referred and other findings based on those observations and his assessment of the witnesses, in particular an expressed assessment of Ms Kang.

Having regard to Devries and Another v Australian National Railways Commission and Another [1992-1993] 177 CLR 472 (HC), I am not persuaded, even on the careful submissions of Mr O'Connor, that there is a serious issue to be tried. That is, of course, not to say that the appeal might not be successful, because that is not what I have either the jurisdiction nor the duty to consider on this occasion.

I heard evidence from the supervisor of the applicant's centre, Major Laurel Iris Pearce. From her evidence, I understood that W would have contact if she returned to duty with persons who had given evidence against her and who might feel aggrieved about the result of the application at first instance. As I understood the evidence, too, there are those persons also who support W and are critical of those who gave evidence against her. If they are, it is open to the inference that they already are of such a mind whether W returns to her employment or not. That, however, is a matter for the employees and the employer. Ill feelings sometimes exist in a workplace for good or bad reasons. It is not a consideration which I am persuaded in this case should deprive the respondent of "the fruits of its litigation".

There was mention of the disabilities of the residents, but I do not think that that is a consideration which militates in favour of the applicant. W has been ordered to be reinstated.

It is significant that she was, after all, dismissed over six months ago and has been out of her employment (whatever other work she might have done elsewhere in the meantime) during that time. The Commission at first instance has found that she was unfairly dismissed and has ordered that she be reinstated. The balance of convenience lies with the respondent, particularly after all of this time, to have her reinstated in her employment.

Further, a consideration of s.26(1)(a) and s.26(1)(c) of the Act, and the interests of the employer (the applicant), the employees, the residents, the respondent and W leads me to this conclusion.

I am not satisfied, either, on the principles set out in *Gawooleng Dawang Inc v Lupton and Others* (op cit), that the respondent should be deprived of the fruits of its litigation.

The equity, good conscience and substantial merits of the case are with the respondent. Therefore, I would not stay the operation of the order enabling the respondent's member to be reinstated. The applicant has not established its case. I would dismiss the application.

Appearances: Mr M O'Connor on behalf of the applicant.

Ms S Jackson on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Salvation Army trading as Graceville Womens Centre
Applicant

and

Australian Liquor, Hospitality and Miscellaneous Workers
Union, Miscellaneous Workers Division, WA Branch
Respondent.

No 1415 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

14 August 1997.

Order.

This matter having come on for hearing before me on the 14th day of August 1997, and having heard Mr M O'Connor on behalf of the applicant and Ms S Jackson on behalf of the respondent, and having reserved my decision on the matter, and having determined that my reasons for decision will issue at a future date, it is this day, the 14th day of August 1997, ordered that application No 1415 of 1997 be and is hereby dismissed.

[L.S.]

(Sgd.) P. J. SHARKEY,
President.

**PRESIDENT—
Unions—Matters dealt with
under Section 66—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Damian Clarke
Applicant

and

The Shop, Distributive and Allied Employees Association of
WA

Respondent

No 1170 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

4 September 1997.

Reasons for Decision.

THE PRESIDENT: This decision involves a short point. Counsel for the respondent organisation submitted that there was no jurisdiction to hear and determine the application in these proceedings. The application was one brought under s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") whereby the applicant sought orders to enable him to become a member of the respondent organisation. The application was alleged to be concerned with rule 26 of the rules of the respondent organisation.

The submission was that the Commission's jurisdiction was not effectively invoked by the application.

The answer and counter proposal contained an allegation that the respondent organisation had not yet considered the applicant's application for membership, and had therefore neither approved nor refused the application. The submission on behalf of the respondent organisation relied on the case of *Nestle Australia Ltd v The President and Members of the Equal Opportunity Board and Others* [1990] VR 805 (SC of Vic). In that case, Vincent J of the Supreme Court of Victoria prohibited the president and members of the Equal Opportunity Board of Victoria from hearing complaints made to it. His Honour held—

- (1) That before the Equal Opportunity Board could commence to inquire into any matter raised by a complaint before it, the written complaint which invokes its jurisdiction must allege the commission of an act which appears on its face to fall within the ambit of those with which it can deal.
- (2) That for this purpose, the written complaint must identify with a sufficient degree of precision the nature of the discrimination alleged so as to enable a determination to be made by the board that its jurisdiction has been properly invoked.
- (3) That the board cannot look to some other statement of particulars of a claim in search of a basis for the assumption of jurisdiction.

The submission was that in paragraphs (6) and (9) of the particulars to the application there was no particular of any breach. The submission was that the applicant's allegation in paragraph (9) "Allow Damian Clarke, of 27 Jess Rd, Bullsbrook, to become a member of The Shop Distributive and Allied Employees Association of WA, from his date of application for membership" was not a sufficient particular to found jurisdiction. There was, as I understood the submission, no allegation of non-compliance with or breach of the rules sufficient to found jurisdiction. Overall in the application, also, as I understood the submission, there was nothing to invoke jurisdiction.

In reply, the applicant sought leave to amend his application to allege breaches of rules 26 and 29 of the respondent organisation's rules.

I gave leave to the applicant to amend and ordered that particulars of the alleged breaches be given.

There are a number of observations which I wish to make.

Firstly, many applications made to this Commission under s.66 of the Act are made by members of organisations, as the latter word is defined in s.7 of the Act. Some of those applications are made by persons who have been members or who have applied to become members of an organisation. Under s.66, one class of eligible applicant is a person who has applied for and not been admitted to membership in an organisation (see s.66(1)(b)).

The application in this matter is one which, on the face of it, was drafted by a lay person and certainly a person unskilled in drafting. That is not uncommon in s.66 applications and not a matter for criticism. However, a fair reading of paragraphs (7), (9) and (10) of the particulars to the application reveals quite clearly that the applicant alleges that he had made application to become a member of the respondent organisation and that he had not been "allowed" to become a member of the respondent organisation. That is, he had not been admitted to membership and was seeking orders that such admission occur.

There was therefore an invocation of jurisdiction on the face of the application which was quite sufficient. I agree that in order to invoke jurisdiction, a s.66 application should make it clear that an applicant is seeking orders or directions relating to the rules of an organisation, as defined, to their observance or non-observance or to the manner of their observance, either generally or in a particular case, and, may, if appropriate, refer to the particular provisions of s.66(2) which appear in the Act.

Such an application, of course, will require particulars to be provided which are sufficient to enable any respondent to be able to understand the case alleged against that respondent. In this case, there were insufficient particulars, but whether particulars are sufficient or not is a different question from whether the application, on its face, invokes the Commission's jurisdiction.

On the submissions made to me, however, too, I am not persuaded, having regard to s.26(1)(a), s.27(1)(l), s.27(1)(m) and s.27(1)(v) of the Act, that I could not remedy an application which did not clearly invoke the jurisdiction, by permitting amendment. If that is the case, whether I should do so in any given case is, of course, another matter.

I would add that there seems to be no reference to any similar statutory provisions, to those which I have referred, in *Nestle Australia Ltd v The President and Members of the Equal Opportunity Board and Others* (op cit) (SC of Vic). I would not therefore, on the submissions put to me in this matter, regard that case as authority which I should follow in the face of those provisions of the Act.

For all of those reasons, I did not accede to the submission that there was no jurisdiction to hear the application. I therefore, since these submissions were made upon a directions hearing, gave appropriate directions to enable the hearing to take place. I did, however, order that adequate particulars be provided by the applicant.

Appearances: Mr D Clarke on his own behalf as applicant.

Mr R Wilenski (of Counsel), by leave, on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Damian Clarke
Applicant

and

The Shop, Distributive and Allied Employees Association of
WA
Respondent.

No 1170 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

4 July 1997.

Order.

This matter having come on for a directions hearing before me on the 4th day of July 1997, and having heard Mr D Clarke

on his own behalf as applicant and Mr R Wilenski (of Counsel), by leave, on behalf of the respondent organisation, and having determined that my reasons for decision will issue at a future date, and the applicant herein having given an undertaking that any documents in the respondent organisation's custody, power or possession discovered, inspected or copied during discovery and inspection will not by virtue of the orders herein be used or disclosed in proceedings in any other jurisdiction, it is this day, the 4th day of July 1997, ordered and directed as follows—

- (1) THAT the hearing and determination of application No 1170 of 1997 be and is hereby adjourned to 10.00 am on Wednesday, the 30th day of July 1997.
- (2) THAT the respondent organisation herein provide to the applicant herein within seven days of the 4th day of July 1997 discovery, inspection and copies of all of the Minutes of the Board of Control of the respondent organisation's meetings from the 1st day of June 1997.
- (3) THAT the applicant herein file and serve further and better particulars of the application herein within seven days of the 4th day of July 1997, setting out fully the following—
 - (a) A statement of each breach alleged to have occurred and the rule alleged to have been breached.
 - (b) A statement when each alleged breach occurred.
 - (c) A statement of the manner each alleged breach occurred.
 - (d) A statement who effected each alleged breach, if any.
- (4) THAT within seven days thereafter the respondent organisation herein file and serve any amended answer and counterproposal.
- (5) THAT within the same seven day period referred to in order (4) the applicant herein do give discovery and inspection of all documents relevant to the nature of the applicant's employment as at the times referred to in the applicant's further and better particulars.

(Sgd.) P. J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Damian Clarke
Applicant

and

The Shop, Distributive and Allied Employees Association of
WA
Respondent.

No 1170 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

30 July 1997.

Order.

This matter having been due to come on for hearing before me on the 30th day of July 1997, and the applicant herein having filed a notice of discontinuance of application on the 11th day of July 1997, and the respondent herein having consented by letter dated the 17th day of July 1997 to the application being discontinued, and the said letter having been filed herein, and I being satisfied by reason thereof that the application should be discontinued, and having determined, pursuant to s.27(1)(a)(ii) and (iv) of the Industrial Relations Act 1979 (as amended), that I should therefore refrain from further hearing or determining the application herein, it is this day, the 30th day of July 1997, ordered and declared that I refrain from further hearing and determining the said application or any part

thereof, and that application No 1170 of 1997 be and is hereby discontinued by consent.

[L.S.]

(Sgd.) P. J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barry Corse
(Applicant)

and

Civil Service Association of WA (Inc)
(Respondent).

No. 1221 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

13 August 1997.

Reasons for Decision.

Introduction.

THE PRESIDENT: This is an application for interim orders by the abovenamed applicant, Barry Corse.

The applicant seeks orders under s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). The orders sought include interim orders to apply until further order of the Commission in the following terms—

"An interim order that the CSA be directed to—

- (a) allow the applicant to attend and participate in the meetings of the CSA;
- (b) allow the applicant to perform his duties as treasurer and a councillor of the CSA.

as if the decisions of the Council on 23 April 1997 and the Executive Committee on 18 June 1997 and the Council on 25 June 1997 referred to (sic) Schedule B to this Application were of no effect."

It was conceded that I had jurisdiction to entertain the application and to make interim orders.

BACKGROUND

The applicant is and was, at all material times, the treasurer of and a member of the Council and Executive of the respondent organisation, subject to events which are the subject of complaint in these proceedings.

The respondent organisation is and was, at all material times, an organisation as that is defined under the Act. The respondent organisation, it is common ground, has a "counterpart Federal body", the Community and Public Sector Union, WA Branch (hereinafter referred to as "the CPSU"), by virtue of an order under s.71 of the Act.

The applicant became the treasurer of and a member of the Council of the Federal CPSU because of an election, as a result of which he also became treasurer of the respondent organisation.

There seems to have been, on the evidence given by affidavit, a history for some time of requests for financial information or reports from the applicant, and a view that these were not forthcoming or were inadequate on the part of some other officers and Council members.

There was also, on the evidence, a tense relationship between the applicant and some other members of the Council of the respondent organisation, including the President.

There was evidence in this matter upon affidavit. There was no viva voce evidence. There was no cross-examination of the persons whose affidavits were filed herein. These were the applicant, Barry Corse, on his own behalf, Richard Barlow, a member of the respondent organisation, Diane Robertson, President of the CPSU and the respondent organisation, and Judith Lee Francis, a member of both organisations, for the respondent.

There were various meetings of the Council and Executive of the respondent organisation before the events complained of in this matter. There was querying of the applicant's alleged non-attendance at meetings and allegations about his failure to provide what the Council and the Executive perceived as the reports which he was required to provide (see, for example, exhibit DR8 to the affidavit of Diane Robertson, page 10).

On 23 April 1997, the Council met. There were tabled two facsimile communications from the applicant dated 16 April 1997 and 23 April 1997 respectively. As a result, the applicant's apology was recorded in the minutes of the meeting of the Council of 23 April 1997.

At the previous Council meeting on 26 March 1997, the Council directed that the treasurer file reports, he having been criticised about inadequate or unforthcoming reports at the Council meeting on 5 March 1997.

In his facsimile communication of 23 April 1997 (exhibit DR10), the applicant advised, inter alia, that he would be unable to attend the meeting due to ill health. He referred to unanswered questions about membership subscriptions and other matters which he said he required as treasurer. This was said not to have been received.

On 23 April 1997, the Council met. The applicant was not present, his apology having been recorded, as I have said. It was noted, according to the minutes, that there was no treasurer's report and that the facsimile communications, being apparently the ones to which I have referred, were "not considered adequate". After discussion, according to exhibit DR13, pages 6-7, which is a copy of the minutes of the meeting, a motion was put to the vote and carried in the following terms—

"... that in view of the Treasurer Corse's lack of response to the requirements set out in the Rules of this Union that this Council, the Governing Body, in view of the Treasurer's ongoing negligence in not carrying out his duties this Council suspend the Treasurer without remuneration from office in the CSA."

No notice of that motion seems to have been given to the applicant.

The President directed that the minutes show that the motion to suspend was a decision of the respondent organisation's Council. There was also a motion moved and carried that the applicant be "charged under the Rules and that the Branch Secretary arrange for the necessary documentation to be put in place" (see page 7, exhibit DR13).

By exhibit DR14 (exhibited to Ms Robertson's affidavit), a letter dated 5 May 1997, the President wrote to the applicant advising, inter alia, that his conduct was a breach of rule 16(b)(2) of the respondent organisation's rules. Rule 16(b)(2) reads as follows—

"(b) The duties of the Honorary Treasurer shall be to—

...

- (2) Submit at each monthly meeting of Council a statement of income and expenditure for the month preceding the meeting. (27/2/89)"

He was also advised in that letter as follows—

"Pursuant to Rule 12(1)(viii) (there is a misprint referring to rule 12(c)(viii) in that letter) of the Rules of the Civil Service Association of WA (Inc) the Council suspends you from the Association for incompetence and/or neglect of your duties as Treasurer by failing to produce a report as directed by the Council on 26 March 1997."

The letter goes on to say—

"Pursuant to Rule 12(1)(viii) of the Rules of the Civil Service Association of WA (Inc), you have seven (7) days from the date of receipt of this letter sent by registered mail to advise in writing if you wish to be heard in your own defence."

On 18 June 1997, the applicant attended an Executive meeting of the CPSU and the respondent organisation. The meeting purported to be a joint meeting of both bodies. There was discussion about a confidential legal opinion about which the applicant asked a number of questions. Previously, there had been a decision of the Executive resolving that an opinion, which was said from the bar table to have been obtained by both the State and Federal organisations, not be discussed

outside the Executive room. The minutes of the meeting of the Executive of 18 June 1997 reflect that the applicant was asked (see exhibit DR23, page 2) whether he would comply with the decision that the opinion was not to be discussed outside the Executive room, and he replied "no comment". As a result, a resolution was passed to exclude him from further meetings of the CPSU/SPSF Group "until the charges against him had been decided". This was not a decision of the respondent organisation. It was plainly an action of the State branch of the Federal body (the Federal counterpart body), and it was not, indeed, submitted to be within my jurisdiction.

On 25 June 1997, as recorded in the minutes (exhibit BC14 to the affidavit of the applicant), it is recorded that the resolution of the Executive to exclude the applicant from meetings was endorsed by the Council. That appears in the respondent organisation's portion of the minutes. If it is not part of the respondent organisation's Council meeting proceedings then there may not have been an exclusion from meetings of that organisation.

By letter (exhibit DR32) dated 26 June 1997, Ms Robertson advised the applicant that the action of the Executive in removing the treasurer from meetings of the union was endorsed by the Branch Council at its meeting held on 25 June 1997. There is no evidence of any notice of motion in relation to this resolution being given to the applicant or any particulars provided.

CONCLUSIONS

There are a number of grounds of this application, including allegations of denial of natural justice (including bias), and there are allegations of a breach of rule 12(1)(viii) of the rules of the respondent organisation. Rule 12(1)(viii) is one of the Council's of the respondent organisation's powers. Rule 12(1)(viii) prescribes as follows—

"(1) The Council shall have power—

...

- (viii) To expel, suspend, remove or fine up to a maximum of fifty dollars any member or Officer or employee who in the opinion of the council acts in a manner contrary to the interests of the Association, or whose conduct has been inconsistent with this Constitution and Rules or the Standing Orders, or who is incompetent or neglectful in the discharge of his or her duties, insofar as such duties relate to the affairs of the Association; Provided that opportunity shall be given (by registered letter with at least 7 days notice) every such member or Officer or employee to be heard in his or her own defence, and provided that every such member or Officer, or employee expelled, suspended, removed or fined, shall have the right of appeal to the next Annual General meeting or Special General meeting called for the purpose, whose decision shall be final."

It is, on its face, a mandatory rule. Thus, if the Council does not comply with its provisions the exercise of power under the rule would be invalid.

What on a fair reading is prescribed by rule 12(1)(viii) is that an officer or member who in the opinion of the Council acts in a certain manner may be suspended, expelled or fined. He or she may also be "removed". However, this may only occur, it might well be argued, after opportunity has been given (and it is required to be given by registered letter with at least seven days notice) to that member or officer the subject of the proposed exercise of power to defend him or herself.

In this case, there is a substantial case to be tried on the evidence before me as to whether the suspension occurred before such opportunity was given and whether, therefore, the power to suspend was exercised invalidly as a result. Similarly, because the suspension might be said to have occurred without notice (although Mr Harris raised an argument to the contrary) and without the applicant being heard, there is a substantial case to be tried as to whether the applicant has been denied natural justice. The same observations can be made about any purported expulsion or exclusion from meetings.

There are other issues raised which it is not necessary at this time to consider.

The question of whether the detriment to the applicant if the order is not made outweighs the detriment to the respondent organisation if the order is made needs to be considered.

As I understand Mr Harris' submission, the Executive can meet to hear the applicant's defence later this month. However, there is no ability in the Executive, it might be argued, to hear a person in his or her defence when the Council is about to exercise its power under rule 12(1)(viii). It might be said that that was a matter for the Council. Secondly, applying what I said, the fact that this might occur should not necessarily be allowed to impede an application for relief, interim or otherwise, under s.66 of the Act (see Hathaway v WALEDF&CU and Others 76 WAIG 2507 at 2511 where the Commission cites Lynch v McLachlan and Others [No 2] [1962] 3 FLR 242 at 245-247 (CIC) and Annamunthodo v Oilfields Workers' Trade Union [1961] 3 All ER 621 (PC)).

Further, it might be argued that the suspension has already occurred and that no other steps can be taken.

I note, too, in that context, that no appeal against the decision has occurred under the rules. Rule 12(1)(viii) provides for such a right. The fact that that has not occurred is not an impediment to this application being made, at least on the arguments so far put to me.

Next, it is necessary to consider that an officer of the respondent organisation has been suspended, and, in fact, suspended purportedly for an indefinite period. Encouraging the democratic control of the respondent organisation by members and their full participation in the affairs of the respondent organisation is an object of the Act (see s.6(f)).

The applicant was an officer elected as treasurer of the respondent organisation, as well as of the counterpart Federal organisation, as I understand the situation. He has not been able to hold office for a time a little short of three months. Of course, as Mr Harris submitted, his application was not filed until 3 July 1997. However, notwithstanding, by the time this matter has been heard on the days in which it is listed for hearing, namely 15, 16 and 17 September 1997, he will have been suspended for a period of almost five months, and if the suspension is not declared invalid upon the hearing and determination of this matter then his suspension might be even longer. That is assuming that the suspension imposed was valid and an appropriate penalty.

The detriment which might be occasioned to the applicant is that a person who has been penalised for incompetence or negligence in his office, having served already a substantial period of suspension, is not able to return to that office while the matter is heard and determined. From the point of view of the respondent organisation as an organisation, and from the point of view of the members, no one has served in his office in that time, as far as I am informed, and the respondent organisation has been deprived of the services of a treasurer.

As to the question of the applicant's alleged failure to keep confidence in relation to the confidential opinion of counsel, he does not admit any transgression in that respect, and I am not persuaded at this time that that is a strong relevant counterbalancing fact compared to the length of time already served in suspension, the objects of the Act, and the interests of the respondent organisation in having a treasurer returned to office having already served a substantial term of suspension.

Accordingly, the interests of the members and of the respondent organisation require his return, at least on an interim basis, after a lengthy period of suspension in order to carry out what the rules envisage to be the role of the treasurer (see s.6(f) and s.26(1)(c) of the Act), particularly since there is a substantial case to be tried. The respondent organisation and the interests of the applicant require at this time that I make that interim order for these reasons (see s.6(f) and s.26(1)(c)).

There is, as I have observed, a substantial case to be tried. The application, although lacking in promptness, having regard to those other considerations, should not fail on that account. In any event, there were developments in June 1997 which purport to have been swept up by the application.

The detriment to the applicant, for those reasons, is substantial in that he is deprived of the office for which he is elected. There is detriment to the respondent organisation itself in the absence of a treasurer for a much longer period whilst this matter is heard and determined, even though the matter is listed

for hearing in the not so distant future. There is no other significantly serious detriment to the respondent organisation established. Even if the applicant had failed in his duties, as alleged, it might be argued that he had already been punished.

That the making of this order is not irreversible upon a final hearing and determination is, of course, important.

It is for the applicant to establish that the interim orders which he seeks should be made. For all of those reasons, I am satisfied that the applicant has established that I should make the interim orders, the equity, good conscience and substantial merits of this application lying with the applicant for interim orders.

I have applied the principles laid down in *Corse v Robinson and CSA 77 WAIG 321 at 322*. I have considered all of the evidence and all of the material, as well as all of the submissions. I have had the assistance of careful and helpful submissions from counsel for both parties.

I should add, perhaps, somewhat unnecessarily, that any conclusion which I have reached or finding which I have made is only for the purpose of hearing and determining this application for interim orders and cannot bind me upon the final hearing and determination of this application.

I therefore will issue a minute of interim orders that the respondent organisation be directed to allow the applicant to attend and participate in meetings of the respondent organisation and further allow the applicant to perform his duties as treasurer and a councillor of the respondent organisation until the hearing and determination of the application herein, or until further order.

Appearances: Mr G Droppert (of Counsel), by leave, on behalf of the applicant.

Mr P L Harris (of Counsel), by leave, and with him Mr A M Niardone (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Barry Corse
(Applicant)

and

Civil Service Association of WA (Inc)
(Respondent).

No. 1221 of 1997.

BEFORE HIS HONOUR THE PRESIDENT.
P J SHARKEY.

12 August 1997.

Interim Order.

THIS matter having come on for an interim orders hearing before me on the 11th day of August 1997, and having heard Mr G Droppert (of Counsel), by leave, on behalf of the applicant and Mr P L Harris (of Counsel), by leave, and with him Mr A M Niardone (of Counsel), by leave, on behalf of the respondent, and having determined that my reasons for decision will issue at a future date, it is this day, the 12th day of August 1997, ordered and directed that the respondent organisation be and is hereby directed to allow the applicant to attend and participate in meetings of the respondent organisation and to allow the applicant to perform his duties as treasurer and a councillor of the respondent organisation until the hearing and determination of the application herein, or until further order.

[L.S.]

(Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barry Corse
(Applicant)

and

Civil Service Association of WA (Inc)
(Respondent).

No. 1221 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

14 July 1997.

Order.

THIS matter having come on for a directions and interim orders hearing before me on the 14th day of July 1997, and having heard Mr G Droppert (of Counsel), by leave, on behalf of the applicant and Mr P Harris (of Counsel), by leave, on behalf of the respondent, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 14th day of July 1997, ordered and directed, by consent, as follows—

- (1) THAT leave be and is hereby granted to Mr G Droppert (of Counsel) and Dwyer Durack as instructing solicitors to appear on behalf of the applicant in this action.
- (2) THAT the application by the applicant for interim orders be and is hereby adjourned for hearing and determination as hereinafter directed.
- (3) THAT the applicant file and serve upon the respondent an affidavit or affidavits deposing to facts relied upon in this application on or before the 21st day of July 1997.
- (4) THAT the respondent file and serve an affidavit or affidavits in reply on or before the 4th day of August 1997.
- (5) THAT the parties herein file and serve requests for discovery and inspection on or before the 21st day of July 1997.
- (6) THAT discovery and inspection be given to each party on or before the 4th day of August 1997.
- (7) THAT the parties herein file and serve any request for further and better particulars of the application and answer and counter proposal on or before the 21st day of July 1997.
- (8) THAT any answers to the further and better particulars in (7) above be filed and served on or before the 4th day of August 1997.
- (9) THAT the matter be and is hereby listed for interim orders for half a day at 9.30 am on Monday, the 11th day of August 1997 and for final hearing and determination at 10.00 am on Monday, the 15th day of September 1997, Tuesday, the 16th day of September 1997 and Wednesday, the 17th day of September 1997.
- (10) THAT there be and is hereby liberty to apply on 48 hours notice.

[L.S.] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Edward Luck

Applicant.

and

William Shephard and Federated Liquor and Allied
Industries Employees' Union of Australia, Western
Australian Branch, Union of Workers.

Respondents.

No. 1019 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

13 August 1997.

Reasons for Decision.

THE PRESIDENT: This was an application by William Edward Luck brought under s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

The applicant claimed that an irregularity occurred in a recently conducted election for the office of secretary/treasurer of the secondnamed respondent. An irregularity is defined in s.7 of the Act as follows—

“**irregularity**”, in relation to an election for an office, includes a breach of the rules of an organization, and any act, omission, or other means by which the full and free recording of votes, by persons entitled to record votes, and by no other persons, or a correct ascertainment or declaration of the results of the voting is, or is attempted to be, prevented or hindered;”

The firstnamed respondent, who was the returning officer in the election, which was declared on 22 May 1997, had refused the nomination of the applicant for election to office within the secondnamed respondent on the grounds of lack of membership or lack of financial membership.

The secondnamed respondent, I should say, is an organisation.

By virtue of exhibit 2, evidence which became available in early July 1997 to Mr Fry, who appeared for the secondnamed respondent, and shortly prior to this hearing and determination to the solicitor for the firstnamed respondent, revealed that from 1990 to the present day the applicant, and it was not contested, was a financial member of the secondnamed respondent.

I was satisfied as a result that I ought to inquire into the election, and, having done so, that I ought to find on the balance of probabilities that the firstnamed respondent erred in the absence of evidence which would have persuaded him otherwise by rejecting the nomination of the applicant. It is fair to say that evidence proving the financial membership was not available to the firstnamed respondent at the time he made the decision.

In the end, I made the orders which I made setting aside the election and its result after my inquiry, by consent.

Appearances: Mr D H Schapper (of Counsel), by leave, on behalf of the applicant.

Ms J H Smith (of Counsel), by leave, on behalf of the firstnamed respondent.

Mr E Fry on behalf of the secondnamed respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Edward Luck

(Applicant)

and

William Shephard and Federated Liquor and Allied
Industries Employees' Union of Australia, Western
Australian Branch, Union of Workers

Respondents.

No. 1019 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

12 August 1997.

Order.

This matter having come on for hearing before me on the 12th day of August 1997, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of the applicant, Ms J H Smith (of Counsel), by leave, on behalf of the firstnamed respondent, and Mr E Fry on behalf of the secondnamed respondent organisation, and having determined that my reasons for decision will issue at a future date, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 12th day of August 1997, ordered and declared, by consent, as follows—

- (1) THAT the declaration made on the 22nd day of May 1997 by the firstnamed respondent that Eugene Leslie Fry is elected unopposed as secretary/treasurer of the secondnamed respondent organisation be and is hereby declared void.
- (2) THAT the firstnamed respondent's decision not to accept the nomination of the applicant, William Edward Luck, for the position of secretary/treasurer of the secondnamed respondent organisation constituted an irregularity and is hereby declared void.
- (3) THAT an election be and is hereby ordered to be held by a duly appointed returning officer for the office of secretary/treasurer of the secondnamed respondent organisation in accordance with the rules of the secondnamed respondent organisation and the Industrial Arbitration (Union Elections) Regulations 1980, save and except that where these orders conflict with the rules of the secondnamed respondent organisation these orders shall prevail.
- (4) THAT the secondnamed respondent organisation provide a full and complete list of persons eligible to vote in the said election as at the 31st day of March 1997.
- (5) THAT the said list be provided to the said duly appointed returning officer within 21 days of the 12th day of August 1997.
- (6) THAT such duly appointed returning officer shall determine the date on which the ballot papers are to be posted to electors and the date of the ballot.
- (7) THAT there be liberty to the parties to apply for further orders.

[L.S.]

(Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Edward Luck and Justin Paltridge O'Malley

Applicants.

and

William Shephard and Federated Liquor and Allied
Industries Employees' Union of Australia, Western
Australian Branch, Union of Workers

Respondents.

No. 1019 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

25 July 1997.

Order.

This matter having come on for a further directions hearing before me on the 25th day of July 1997, and having heard Mr D H Schapper (of Counsel) by leave, on behalf of the applicants, Ms J H Smith (of Counsel), by leave, on behalf of the firstnamed respondent, and

Mr E Fry on behalf of the secondnamed respondent organisation, and the secondnamed applicant, Justin Paltridge O'Malley having advised through his Counsel that he was discontinuing his application, and I having determined therefor, pursuant to s.27(1)(a)(ii) and (iv) of the Industrial Relations Act 1979 (as amended), (hereinafter "the Act"), that I refrain from further hearing and determining his application, and having given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, and the parties herein having consented to waive the requirements of s.35 of the Act, it is this day, the 25th day of July 1997, ordered and directed by consent as follows—

- (1) THAT the hearing and determination of application No 1019 of 1997 be and is hereby adjourned to 10.00 am on Tuesday, the 12th day of August 1997.
- (2) That I refrain from further hearing and determining the application by the secondnamed applicant, Justin Paltridge O'Malley, his application having been discontinued.

(Sgd.) P.J. SHARKEY,
President.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Edward Luck and Justin Paltridge O'Malley

Applicants.

and

William Shephard and Federated Liquor and Allied
Industries Employees' Union of Australia, Western
Australian Branch, Union of Workers

Respondents.

No. 1019 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

13 June 1997.

Order.

This matter having come on for a directions hearing before me on the 13th day of June 1997, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of the applicants, Ms J H Smith (of Counsel), by leave, on behalf of the firstnamed respondent, and Mr E Fry on behalf of the secondnamed respondent organisation, and having given my reasons for decision, and having given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, and the parties herein having consented to waive the requirements of s.35 of the Industrial

Relations Act 1979 (as amended), it is this day, the 13th day of June 1997, ordered and directed as follows—

- (1) THAT the secondnamed respondent shall, within 21 days of the date of this order, give to the applicants discovery of all documents in its custody, power or possession which relate to the current and former membership of the secondnamed respondent or of the Federal union of each of the applicants and of those persons declared elected on the 22nd day of May 1997, such discovery to be verified by affidavit filed herein and served on all of the parties hereto.
- (2) That the firstnamed applicant, William Edward Luck, do, within 21 days of the date of this order, give to the secondnamed respondent discovery verified by affidavit of all documents in his custody, power or possession which relate to his claimed membership and financial status, in or in relation to the secondnamed respondent, such affidavit also to be filed herein and served on all parties to this application.
- (3) THAT this directions hearing be and is hereby otherwise adjourned sine die, provided that it may be re-listed upon the application of any party in writing to the Commission, such application to be also served upon the other parties.

(Sgd.) P.J. SHARKEY,
President.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Edward Luck and Justin Paltridge O'Malley

Applicants

and

William Shephard and Federated Liquor and Allied
Industries Employees' Union of Australia, Western
Australian Branch, Union of Workers

Respondents.

No. 1019 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 June 1997.

Order.

This matter having come on for a directions hearing before me on the 9th day of June 1997, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of the applicants, Mr E Fry on behalf of the secondnamed respondent organisation, and there being no appearance by or on behalf of the firstnamed respondent, and the secondnamed respondent organisation having sought to have the directions hearing adjourned, and there being no objection by the applicants herein through Counsel, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 9th day of June 1997, ordered and directed that application No 1019 of 1997 be and is hereby adjourned to 9.15 am on Friday, the 13th day of June 1997 for a directions hearing.

(Sgd.) P.J. SHARKEY,
President.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
(Applicant)

and

The West Australian Locomotive Engine Drivers',
Firemen's and Cleaners' Union of Workers
(Respondent).

No. 1171 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

22 July 1997.

Reasons for Decision.

THE PRESIDENT: This matter came on before me for final hearing and determination on 21 July 1997. There was no dispute concerning the evidence in this matter.

It is clear that this application is endorsed by the General Committee because that is the resolution recorded in the copy Minutes of the General Committee of 8 July 1997 tendered as exhibit 5.

Further, since the interim order was made by me on 7 July 1997, a Mr John Cracknell, another member of the General Committee, has resigned leaving only eight members. Accordingly, a quorum of nine cannot, presently, be attained. If I did not make orders to reduce the quorum, and which I did make, then the respondent organisation could not function. What would have to occur is that there would have to be extraordinary general meetings of the delegates, a very cumbersome affair.

The Executive, as I have observed in the past, can only make decisions under rule 21 which are subject to confirmation by the General Committee. If the General Committee is not functioning or cannot function then, in effect, the government of the union is almost at a standstill.

I was informed that the Registrar of this Commission has been requested to arrange for an election to fill the four vacancies on the General Committee. It seemed to me, therefore, that the interests of the respondent organisation and its members required me to make the orders which I did and that the equity, good conscience and substantial merits of the case required me to make that order so that the respondent organisation could function in the meantime.

I am satisfied that an election conducted by the State Electoral Commission is to be completed for these offices within 11 to 12 weeks. Thus, I made the orders sought to have effect until the expiry of three months from the date of these orders or until the election for these offices is completed, whichever is the sooner. I also ordered that there be liberty to apply in case there is valid reason to extend the life of these orders.

Appearances: Mr P W Veenstra on his own behalf as applicant.

Mr D K Hathaway on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
(Applicant)

and

The West Australian Locomotive Engine Drivers',
Firemen's and Cleaners' Union of Workers
(Respondent).

No. 1171 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

21 July 1997.

Order.

THIS matter having come on for hearing before me on the 21st day of July 1997, and having heard Mr P W Veenstra on

his own behalf as applicant and Mr D K Hathaway on behalf of the respondent organisation, and having determined that my reasons for decision will issue at a future date, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 21st day of July 1997, ordered and directed, by consent, as follows—

- (1) THAT for the purposes of rule 13 of the rules of the respondent organisation the attendance of six members at meetings of the General Committee shall constitute a quorum until the 22nd day of October 1997 or until elections to fill the present vacancies in the General Committee have been completed, whichever is the sooner.
- (2) THAT there be liberty to either party to apply in respect of order (1).

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
(Applicant)

and

The West Australian Locomotive Engine Drivers',
Firemen's and Cleaners' Union of Workers
(Respondent).

No. 1171 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

8 July 1997.

Reasons for Decision.

THE PRESIDENT: This is an application brought under s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). It was conceded that I had jurisdiction to hear and determine the matter in that Mr Veenstra is and was, at all material times, a member of the respondent organisation, and the respondent organisation is and was, at all material times, an organisation as that is defined in s.7 of the Act.

The application was listed for a directions hearing and for the hearing and determination of an application for interim orders, on 7 July 1997.

Mr Veenstra appeared for himself and Mr David Kimberley Hathaway, the General President, appeared for the respondent organisation.

In the end, I made interim orders by consent.

I have, of course, made similar orders earlier this year as a result of on-going difficulties within the respondent organisation.

The applicant sought a proposed interim order in the following terms—

"That rule 13 of the respondent organisation's rules be amended to read, in the last paragraph (paragraph 5), "**Not less than six members shall form a quorum at all meetings of the General Committee**", until the matter has been determined by final hearing."

Rule 13, which relates to General Officers and the General Committee, prescribes that—

"Not less than nine members shall form a quorum at all meetings of the General Committee."

There was evidence given from the bar table, which was not controverted by either party, and which, indeed, was common ground. The substance of that evidence was that three members of the General Committee, including the General Vice-President, had resigned. There are normally 12 members of the General Committee. There are now only nine. It has not been possible, for over two months, to achieve the required quorum of nine so that a valid meeting of the General

Committee might occur. As a result of the resignations, there are only nine members of the General Committee left until the vacancies are filled under rule 15. However, that process cannot be commenced until the General Committee can meet in a valid meeting in order to take action under rule 15.

The fact of the matter is that the respondent organisation has not been able to properly operate since 29 April 1997, when the last valid meeting of the General Committee took place, no quorum having been present since then.

The Executive Committee, which cannot finally determine matters, has been attempting to do what it can within its limited functions to govern the respondent organisation until a valid meeting of the General Committee occurs.

I was informed from the bar table that the remaining nine members of the General Committee support this application. I accept that for the purposes of this hearing.

Obviously, if, as is the case, only nine members are left on the Committee, then there is no margin for error. There is the risk that a quorum cannot be readily achieved because it cannot be achieved if one person, even, is missing for good reason. One member, I am told, is presently in Kalgoorlie and is not always released by his employer, in any event, to attend.

Based on that evidence, which I accept, and upon those considerations, the equity, good conscience and substantial merits lie with the applicant. The obvious detriment to the respondent organisation and its members were I not to make these orders, together with the consent to such orders of the respondent organisation, and the fact that there is an obvious substantial case to be tried, lead to the conclusion that an interim order should be made as sought.

For almost the same reasons as I expressed in Veenstra v WALEDF&CU 77 WAIG 1115 at 1116, and applying Corse v Robinson and CSA 77 WAIG 321 at 322, I made interim orders and gave directions, inter alia, reducing the required quorum under rule 13 for the time being to six.

Appearances: Mr P W Veenstra on his own behalf as applicant.

Mr D K Hathaway on behalf of the respondent organisation.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Wallis Veenstra
(Applicant)

and

The West Australian Locomotive Engine Drivers',
Firemen's and Cleaners' Union of Workers
(Respondent).

No. 1171 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

7 July 1997.

Interim Order.

THIS matter having come on for a directions and interim orders hearing before me on the 7th day of July 1997, and having heard Mr P W Veenstra on his own behalf as applicant and Mr D K Hathaway on behalf of the respondent organisation, and having determined that my reasons for decision will issue at a future date, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 7th day of July 1997, ordered and directed, by consent, as follows—

- (1) THAT the hearing and determination of application No 1171 of 1997 be and is hereby adjourned to 10.00 am on Monday, the 21st day of July 1997.
- (2) THAT until the final hearing and determination of application No 1171 of 1997 or until further order, at all meetings of the General Committee of the respondent organisation, the presence of not less than six members of the General Committee shall constitute a quorum.

- (3) THAT a copy of this order shall be served at the next General Committee meeting upon all members present and within 48 hours of the 7th day of July 1997 on all those not present at such General Committee meeting.

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

**AWARDS/AGREEMENTS—
Application for—**

**ALLCON STEEL CONSTRUCTION INDUSTRIAL
AGREEMENT.**

No. AG 141 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers and The Construction, Mining,
Energy, Timberyards, Sawmills and Woodworkers Union of
Australia—Western Australian Branch

and

Factor Holdings Pty Ltd trading as Allcon Steel Fabrication.

No. AG 141 of 1997.

Allcon Steel Construction Industrial Agreement.

COMMISSIONER P. E. SCOTT.

21 August 1997.

Order.

HAVING heard Mr G Giffard on behalf of the Applicants and there being no appearance on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Allcon Steel Construction Industrial Agreement in the terms of the following schedule be registered on the 30th day of July 1997.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

Schedule.

WAGE AGREEMENT

1.—TITLE

This Agreement will be known as the Allcon Steel Construction Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship with Awards
9. Enterprise Agreement
10. Wage Increase
11. Site Allowance
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Sick Leave
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program

- Appendix A—Wage Rates
- Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
- Appendix C—Site Allowance

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers and the Construction, Mining, Energy, Timbryards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Unions") and Factor Holdings Pty Ltd trading as Allcon Steel Fabrication (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members of the Unions employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

There are approximately 3 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 July 1999.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Awards the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Unions and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A—Wage Rates.

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to \$45 per week per employee into the Western Australian Construction Industry Redundancy Fund and will increase this to \$50 per week per employee on 1 August 1998.

2. Superannuation

The Company will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$55 per week per employee and will increase this to \$60 per week per employee on 1 August 1998.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year)

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

14.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of \$12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than—

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

15.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

16.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

- (a) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (b) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the

unpaid balance of sick leave shall continue from the date of re-engagement.

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—FARES AND TRAVELLING

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of \$6.15 per day per employee.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

Signed for and on behalf of—

The Unions BLPPU Signed COMMON SEAL
Date: 7/7/97

Signed
WITNESS

CMETU Signed COMMON SEAL
Date: 7/7/97

Signed
WITNESS

The Company Signed
Date: 7/7/97

T. CONDIPODERO
PRINT NAME

Signed
WITNESS

APPENDIX A—WAGE RATES

	Date of Signing	1 August 1997	1 February 1998	1 August 1998	1 February 1999
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
	\$	\$	\$	\$	\$
Labourer Group 1	15.11	15.71	16.32	16.92	17.53
Labourer Group 2	14.59	15.17	15.75	16.34	16.92
Labourer Group 3	14.20	14.77	15.34	15.90	16.47
Plasterer, Fixer	15.70	16.33	16.96	17.58	18.21
Painter, Glazier	15.35	15.96	16.58	17.19	17.81
Signwriter	15.68	16.31	16.93	17.56	18.19
Carpenter	15.80	16.43	17.06	17.70	18.33
Bricklayer	15.64	16.27	16.89	17.52	18.14
Refractory Bricklayer	17.96	18.68	19.40	20.12	20.83
Stonemason	15.80	16.43	17.06	17.70	18.33
Rooflayer	15.52	16.14	16.76	17.38	18.00
Marker/Setter Out	16.26	16.9	17.56	18.21	18.86
Special Class T	16.47	17.13	17.79	18.45	19.11

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

* Site safety and the involvement of the site safety committee

* Peer intervention and support

* Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dissmised the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

* Will not be sacked if he/she is willing to get help.

* Must undertake and continue with the recommended treatment to maintain the protection of this program.

* Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX C—SITE ALLOWANCE

Note: THE RATES PRESCRIBED IN THIS AGREEMENT APPLY TO PROJECTS COMMENCED ON OR AFTER 1 NOVEMBER 1997 AND WILL NOT BE FURTHER REVIEWED UNTIL 1 NOVEMBER 1997.

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$500,000	NIL
Above \$500,000 to \$2.1m	\$1.80
Above \$2.1m to \$4.4m	\$2.15
Over \$4.4m	\$2.75

Renovations, Restorations and/or Refurbishment Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$500,000	NIL
Above \$500,000 to \$2.1m	\$1.60
Above \$2.1m to \$4.4m	\$1.80
Over \$4.4m	\$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$500,000	NIL
Above \$500,000 to \$2.1m	\$1.60
Above \$2.1m to \$4.4m	\$1.80
Over \$4.4m	\$2.35

Renovations, Restorations and/or Refurbishment Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$500,000	NIL
Above \$500,000 to \$2.1m	\$1.50
Above \$2.1m to \$4.4m	\$1.70
Over \$4.4m	\$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$1m	NIL
Above \$1m to \$2.1m	\$1.20
Above \$2.1m to \$5.8m	\$1.50
Above \$5.8m to \$11.6m	\$1.75
Above \$11.6m to \$23.6m	\$1.95
Above \$23.6m to \$58.6m	\$2.25
Over \$58.6m	\$2.45

“**C.B.D.**”—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth-Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

“**West Perth**”—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the “CBD” and the western side of Havelock Street shall be in “West Perth”.

“**Project Contractual Value**”—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor’s contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each

year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest \$10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contractor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

BHP DIRECT REDUCED IRON PTY LIMITED HBI-PORT HEDLAND OPERATIONS INDUSTRIAL AGREEMENT 1996.

No. AG 294 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

BHP Direct Reduced Iron Pty Ltd

and

The Australian Workers’ Union, West Australian Branch,
Industrial Union of Workers.

No. AG 294 of 1996.

BHP Direct Reduced Iron Pty Limited HBI-Port Hedland
Operations Industrial Agreement 1996.

COMMISSIONER P E SCOTT.

5 September 1997.

Order.

HAVING heard Mr D Murrice and with him Mr J Woolfrey on behalf of the Applicant and Mr D Bartlem on behalf of the Respondent and by consent, the Commission, pursuant to the

powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the BHP Direct Reduced Iron Pty Limited HBI-Port Hedland Operations Industrial Agreement 1996 in the terms of the following schedule be registered on the 20th day of August 1997.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

Schedule.

BHP Direct Reduced Iron Pty Ltd HBI—Port Hedland
Operations Industrial Agreement

INTENT

This document formally records the terms and conditions of employment covering the HBI Operation. The document should not be read or construed as limiting the commitment of the parties to the vision and values that have been developed for HBI.

1.—TITLE

This Agreement shall be known as the BHP Direct Reduced Iron Pty Limited HBI-Port Hedland Operations Industrial Agreement 1996.

2.—ARRANGEMENT

- Intent
1. Title
 2. Arrangement
 3. Parties to the Agreement
 4. Extent of Agreement
 5. Relationship to Awards
 6. Term
 7. Single Enterprise
 8. Resolution of Questions, Disputes or Difficulties
 9. Contract of Service
 10. Salary
 11. Emergency Response Training
 12. Payment of Salary
 13. Work Flexibility
 14. Hours of Work
 15. Shiftwork and Rosters
 16. Annual Leave
 17. Sick leave
 18. Long Service Leave
 19. Public Holidays
 20. Parental Leave
 21. No Extra Claims
 22. Continuity of Operations and Supply
 23. Redundancy
 24. Signatures to Agreement
- Appendix 1—Procedure for Resolution of Questions, Disputes or Difficulties
Appendix 2—Annual Leave
Appendix 3—Sick Leave
Appendix 4—Long Service Leave
Appendix 5—Parental Leave
Appendix 6—Redundancy

3.—PARTIES TO THE AGREEMENT

1. The Australian Workers' Union Western Australian Branch Industrial Union of Workers ("The Union"); and
2. BHP Direct Reduced Iron Pty Ltd ("the Company")

4.—EXTENT OF AGREEMENT

1. This Agreement extends to the employees of the Company employed by it in the Company's HBI-Port Hedland operation in the State of Western Australia in the job classifications listed in clause 10—Salary of this Agreement, and to no other employer and employees.

2. It is estimated that 100 employees will be bound by this Agreement upon registration.

5.—RELATIONSHIP TO AWARDS

This Agreement applies to the employees referred to in clause 4—Extent of Agreement, and no award, either existing or future, and irrespective of whether or not provision may have been made in any such award for any item not covered by this

Agreement, will apply to the Company's employment of such employees.

6.—TERM

The term of the Agreement shall be for a period of three (3) years as from the date of registration.

7.—SINGLE ENTERPRISE

It is agreed by the Company and the Union that this Agreement applies in respect of a single enterprise as defined in section 41A(2) of the Industrial Relations Act 1979 (WA) ("the Act").

8.—RESOLUTION OF QUESTIONS, DISPUTES OR DIFFICULTIES

Should any questions, disputes or difficulties arise between the Company, the employees covered by this Agreement, or the Union it shall be dealt with according to the procedure set out in Appendix 1.

9.—CONTRACT OF SERVICE

1. Subject to sub-clause 2 below, employment shall be terminated by 4 weeks' notice either by the Company or by an employee, or by the payment by the Company, or the forfeiture by an employee, of 4 weeks' salary.

2. In the event of the Industrial Relations Act, 1988 (Cth) (the "Act") being applicable to the termination of employment of an employee by the Company, and the Act providing for a period of notice greater than that specified in sub-clause 1 above, then such period of notice as is set out in the Act shall be applicable in respect of the Company's termination of such employee's services.

3. Nothing in this clause shall affect the right of the Company to dismiss any employee without notice for misconduct, and in such cases salary shall be paid only up to the time of dismissal.

4. Notwithstanding sub-clause 1 above, the Company and an employee may agree that the period of notice which the employee is to give to the Company (or the salary an employee is to forfeit in lieu of so giving notice) is to be less than four weeks.

10.—SALARY

1. The following salary will be applicable to each of the job classifications listed below—

Area Technicians		EMP Technicians	
High impact level	\$72,000	High impact level	\$80,000
Recognition level 1	\$61,000	Recognition level 2	\$69,000
Entry level	\$50,000	Recognition level 1	\$58,000
		(Process base)	
		Entry level	\$58,000
		(Trade base)	
		Entry level	\$52,000
		(Process base)	

2. The salary listed above is payable for all services rendered and is inclusive of any allowances, loading, penalty rates for shiftwork and shift relief, work on public holidays (but subject to sub-clause 19.1—Public Holidays), additional hours of work such as is contemplated by sub-clause 14.2—Hours of Work, and time spent on emergency response training.

3. An Employee Development Model provides the basis for pay progression.

Employees will progress within this model based on the team's skill requirement, the employee's ability to learn new skills and train others in those skills and the employee's displayed behaviours.

4. In addition to any change in salary based on the Employee Development Model, salaries will be reviewed annually in accordance with the HBI salary administration program.

11.—EMERGENCY RESPONSE TRAINING

The employees shall, from time to time and as and when the Company so requires, perform or participate in emergency response training outside of usual and additional hours or work as set out in clause 14—Hours of Work.

12.—PAYMENT OF SALARY

Salary will be paid in equal fortnightly instalments, into a bank account or any other account nominated by an employee.

13.—WORK FLEXIBILITY

1. It is the intention of the Parties to this Agreement that all employees be extensively skilled, and be able to perform a wide range of job functions within the HBI Port Hedland Operation. The Parties agree that the employees may be required to perform any duties within their skills, training, experience and competence.

2. Should an Area Technician be required to provide relief on shift on a temporary basis, they will work the same hours as an EMP Technician. This requirement to provide shift relief has been taken into account when setting the Area Technician's salary.

14.—HOURS OF WORK

1. The usual hours of work for employees are—

- (a) EMP Technicians 45 hours per week
- (b) Area Technicians 45 hours per week

2. Notwithstanding the employees' usual hours of work, they shall work such additional hours as may reasonably be required from time to time to meet operational requirements.

15.—SHIFTWORK AND ROSTERS

1. The Company shall determine the rostering arrangements which are suitable to its requirements as they may be from time to time and shall after consultation with relevant employees, subject to sub-clause 2 below, be able to roster the employees to work on such shifts as are determined by it from time to time and may, in this regard—

- a) determine which employees shall work on particular shifts; and
- b) change employees from one shift to another;
- c) determine the time when each shift commences and ends; and
- d) change employees from one shift system or roster pattern to another

2. The Company shall, when changing employees from one shift to another, or when changing employees from one shift system or roster pattern to another, give employees reasonable notice of such change, or such lesser period of notice as may be agreed to between the Company and an employee.

16.—ANNUAL LEAVE

Annual leave entitlements are set out in Appendix 2.

17.—SICK LEAVE

The terms and conditions applicable to the taking of sick leave are set out in Appendix 3.

18.—LONG SERVICE LEAVE

Long service leave entitlements are set out in Appendix 4.

19.—PUBLIC HOLIDAYS

1. Area Technicians are entitled to paid leave on such days as are determined by the Parliament of Western Australia or as otherwise gazetted in the locality to be public holidays provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of these days.

2. EMP Technicians will be required to work on such days as are so stated to be public holidays should they be rostered to work on those days.

20.—PARENTAL LEAVE

The terms and conditions applicable to the taking of parental leave are set out in Appendix 5.

21.—NO EXTRA CLAIMS

The parties agree that there will be no extra claims for the duration of this agreement.

22.—CONTINUITY OF OPERATIONS AND SUPPLY

The parties to this agreement recognise that the continuous nature of the HBI process cannot be compromised and as a consequence are committed to maintaining that continuity by—

- i) Utilising the provisions of Appendix I for the resolution of questions, disputes or difficulties; and
- ii) Ensuring that employees are available as required to produce hot briquetted iron in order to maintain the integrity of the plant and meet customer requirements.

23.—REDUNDANCY

The terms and conditions of employment applicable to redundancy are set out in appendix 6.

24.—SIGNATURES TO AGREEMENT

Signed for and on behalf of BHP Direct
Reduced Iron Pty Limited in the presence of:

.....Signed.....

.....Signed.....

Dated: 6/11/96

Signed for and on behalf of the Australian
Workers' Union in the presence of:

.....Signed (Branch Sec.).....

.....Signed (Branch Pres.).....

.....Signed.....

Common Seal

Dated: 6/11/97

APPENDIX 1

PROCEDURE FOR RESOLUTION OF QUESTIONS
DISPUTES OR DIFFICULTIES

1. The intent of this procedure is to resolve employee questions, disputes or difficulties promptly and efficiently.

2. Should any question, dispute or difficulty arise such as is contemplated by clause 8—Resolution of Questions, Disputes or Difficulties, the following procedure shall be followed—

Step 1 An employee who wishes to raise a question, dispute or difficulty shall attempt to resolve the matter with their team (with the assistance of the team leader, if necessary).

Step 2 If the matter remains unresolved, then discussions shall be referred to the Superintendent. The employee may seek the assistance of another employee or employee union representative in this process.

Step 3 If the matter remains unresolved, then discussions shall be referred to the Manager. The employee may seek the assistance of another employee or employee union representative in this process.

Step 4 If the matter still remains unresolved, it shall be referred to General Manager. The employee may seek the assistance of another employee, employee union representative and/or a state union official in this process.

Step 5 If the matter remains unresolved either party may refer it to the Western Australian Industrial Relations Commission.

APPENDIX 2

ANNUAL LEAVE

1. On completion of 12 months' service, employees will have the following leave entitlements per annum—

- a) EMP Technicians (employees working shiftwork)—
19 rostered shifts;
- b) Area Technicians (employees working day work)—
25 working days.

2. Employees may take advanced leave, pro rata to their service, prior to the completion of 12 months' service, with the agreement of the Company.

3. Should an employee be incapacitated due to illness or injury for a period of 5 days or more whilst on annual leave, the employee may convert such period of incapacity whilst on annual leave into sick leave, provided that the employee provides a doctor's certificate detailing the period and cause of the incapacity.

4. Whilst on annual leave, employees will be paid their normal salary.

5. Employees are, subject to clauses 8 and 9 below, entitled to a holiday assistance equivalent to the cost of 2 return economy airfares to Perth for both themselves and each of their dependants, in respect of each completed year of service.

For the purposes of this appendix, "dependant" means—

- a) a spouse or de facto spouse;
- b) a child aged 16 years or less;

- c) a child aged 24 years or less who is a full-time student at a school, college or university and who is wholly dependent for their support upon their parent(s).

6. The holiday assistance must be utilised by the employees during the 12 month period immediately following the completion of each year of service. Unless the Company agrees to this the holiday assistance may not be accumulated from year to year, and will be forfeited should it not be taken.

7. Should an employee, with the agreement of the Company take annual leave after 6 months' service with the Company, but prior to completion of 12 months' service, the employee will be entitled to holiday assistance equivalent to the cost of one return economy airfare to Perth, but subject to the employee refunding such moneys to the Company if the employee's employment terminates prior to the employee completing 12 months' service with the Company.

8. Employees are entitled to receive such holiday assistance only if annual leave;

- a) is taken by the employee away from Port Hedland; and
b) is taken for at least the following minimum period;
- i) in the case of EMP Technicians—1 week;
 - ii) in the case of Area Technicians—5 consecutive working days.

9. Employees are not entitled to receive holiday assistance should they be a dependent of another BHP employee who is claiming holiday assistance on their behalf.

APPENDIX 3

SICK LEAVE

1. Employees are entitled to paid sick leave when they are ill or injured.

2. In circumstances of serious illness or injury to an employee (other than in respect of injuries for which an employee is in receipt of workers compensation), the Company may agree to an employee taking paid sick leave up to a maximum period of 12 months.

3. Employees will, whilst on sick leave contemplated in this appendix, receive pay equivalent to their salary.

4. Employees are required to notify as soon as possible if illness or injury will prevent their attendance at work.

5. The Company may, in respect of any employee's absence from work due to illness or injury, require the employee to produce a medical certificate specifying the nature of the illness or injury, and the length of absence from work.

6. Employees who have been on sick leave must complete an application for leave form on their return from sick leave. Employees who anticipate taking sick leave must complete such form prior to going on sick leave.

7. The Company may, in its discretion, require an employee who has been on sick leave to provide the Company with a medical clearance indicating that the employee is fit to return to work and is able to perform the same duties as were performed by the employee prior to going on sick leave.

8. The Company shall endeavour to find alternative employment suitable to an employee's skills and experience should an employee, after returning to work after a period of sick leave, not be able to perform the same duties as were performed by the employee prior to going on sick leave.

APPENDIX 4

LONG SERVICE LEAVE

1. Long Service Leave will accrue to employees at the rate of 6.5 days per annum for their first 19 years of continuous service, and at 9.2 days per annum for each year of service thereafter.

2. Employees are entitled to 13 weeks of long service leave after 10 years' continuous service.

3. Employees may, after 5 years' continuous service, take such long service leave as will have accrued to them as at that date.

4. Employees who have had less than 5 years' continuous service shall not be entitled to any long service leave, nor to any payment in lieu upon termination.

5. Should an employee not have taken pro rata long service leave prior to 10 years of continuous service, the long service leave which will have accrued to the employee after such period of service shall be granted and taken as soon as reasonably practicable after it has accrued, or at such time or times as may be agreed between the Company and the employee.

6. Employees shall, in all circumstances where they have not reached an agreement with the Company as to the time or times when long service leave is to be taken, inform the Company of their intention to take such leave at least 1 month prior to doing so.

7. Employees may take long service leave as it accrues, but subject to any other provision in this appendix and subject to their taking such leave for minimum periods of 5 continuous working days.

8. Employees are not entitled to have any other employment whilst on long service leave, and will forfeit their entitlement to be paid their salary whilst on long service leave should they have such employment.

APPENDIX 5

PARENTAL LEAVE

1. Relevant State and Federal legislation shall govern the employees' entitlements to, and terms and conditions applicable to the taking of, parental leave. However, clauses 2 to 8 inclusive of this appendix shall also apply to the employees' entitlement to, and the terms and conditions applicable to the taking of, parental leave. It is intended that the provisions of this appendix shall supplement such legislation.

2. Employees may receive such holiday assistance as they are entitled to receive (in terms of appendix 2) in respect of annual leave taken by them whilst on parental leave.

3. Employees on parental leave may, by paying contributions to the BHP Superannuation Fund defined contribution division (the "Fund") maintain their continuity of service for the purposes of the Fund. An employee may, in this regard—

- (1) Pay 16% of their salary as at the date of commencement of parental leave, to the Fund, in which event such amount will be regarded as the employee's contribution to the Fund for the period of parental leave, for the purposes of calculating the employee's future benefits in terms of the Fund; or
- (2) Pay 1 % of such salary to the Fund, in which event the employee shall be entitled only to Death and Disablement benefits in terms of the Fund.

4. An employee shall give no less than 4 weeks' notice, in writing, of their intention to proceed on parental leave.

5. Prior to an employee proceeding on parental leave, the Company will provide to them a letter confirming the conditions of such leave.

6. Employees shall give no less than 4 weeks' notice, in writing, of their intention to return to work after a period of parental leave.

7. On finishing parental leave, an employee is entitled to return to the position they held immediately prior to proceeding on parental leave or, if such position no longer exists, an available position for which they are qualified and are capable of performing. Should the only available position be at a lower level than that occupied by the employee immediately prior to proceeding on parental leave then, in the event of the employee accepting such position, the Company shall continue paying to the employee the salary of the position they had occupied immediately prior to proceeding on parental leave.

8. The Company and an employee may agree that the employee returns to work on a permanent or casual basis prior to the expiry of the period of parental leave.

APPENDIX 6

REDUNDANCY

Where, as a result of rationalisation, reorganisation, introduction of new technology or significant changes in work methods or practices, the operation no longer requires employees to carry out work of a particular kind, it may be necessary to retrench or to seek voluntary retirees.

The following entitlements will apply to the current continuous period of employment—

- Three months' notice or pay in lieu (at the Company's discretion)
- Two months' severance payment
- Two weeks' pay for each complete continuous year of service and pro rata for the current year
- Payment of annual leave and long service leave accrued and not taken at the time of termination
- Payment of all pro rata payments due to the employee on termination provided that employees with less than five years continuous service shall also be entitled to pro rata long service leave upon completion of twelve months' continuous service.

6. Minimum Wage—Adult Males and Females
7. Junior Employees
8. Apprentices
9. Definitions
10. Contract of Service
11. Hours
12. Additional Rates for Ordinary Hours
13. Overtime
14. Casual Employees
15. Part-Time Employees
16. Meal and Rest Breaks
17. Meal Money
18. Sick Leave
19. Bereavement Leave
20. Public Holidays
21. Annual Leave
22. Long Service
23. Payment of Wages
24. Bar Work
25. Higher Duties
26. Uniforms and Laundering
27. Protective Clothing
28. Employees' Equipment
29. Record
30. Roster
31. Change and Restrooms
32. First Aid
33. Union Notices
34. Union Delegates and Meetings
35. Under Rate Employees
36. Breakdowns or Stoppages
37. Right of Entry
38. Breakages
39. Resolution of Disputes
40. Limitation of Work
41. Travelling Facilities
42. Parental Leave
43. Superannuation
44. Single Enterprise
45. No Extra Claims

BURSWOOD INTERNATIONAL RESORT CASINO EMPLOYEES' INDUSTRIAL AGREEMENT 1997.

No. AG 164 of 1997.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Burswood Resort (Management) Limited

and

Federated Liquor and Allied Industries

Employees' Union of Australia,

Western Australian Branch, Union of Workers.

No. AG 164 of 1997.

COMMISSIONER J. F. GREGOR.

12 August 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. AG 164 OF 1997

Having heard Mr L. Levine (of Counsel) on behalf of the first named party and Mr E. Fry on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document titled Burswood International Resort Casino Employees' Industrial Agreement 1997, filed in the Commission on 31 July 1997, be and is hereby registered as an Industrial Agreement with effect from 18 August 1997.

[L.S.] (Sgd.) J. F. GREGOR, Commissioner.

BURSWOOD INTERNATIONAL RESORT CASINO EMPLOYEES'

INDUSTRIAL AGREEMENT 1997

1.—TITLE

This agreement shall be known as the Burswood International Resort Casino Employees' Industrial Agreement 1997 and shall replace and supersede the Burswood Island Resort Employees' Award No. A23 of 1985 and No. A25 of 1985 (as varied), the Burswood Resort Casino Employees' Industrial Agreement 1993 Amendment Agreement 1995 No. AG 132 of 1995, and the Hotel and Tavern Workers' Award, 1978 No R31/1977 (as varied) insofar as concerns the area of land occupied by the Burswood Island Resort in the State of Western Australia.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope and Parties Bound
4. Term
5. Wages

3.—SCOPE AND PARTIES BOUND

This agreement shall be binding upon all employees employed by Burswood Resort (Management) Limited in its capacity as Manager of the Burswood Property Trust in the callings described in clause 5—Wages of this agreement and on Burswood Resort (Management) Limited (in such capacity), and upon no other employer or employee.

4.—TERM

The term of this agreement shall be for a period of two (2) years from the date of registration.

5.—WAGES

(1) The following tables as listed hereunder shall specify the minimum fortnightly rate of wage payable to employees covered by this agreement. The rates prescribed in Column A shall take effect from the date of registration of this agreement. The rates prescribed in Column B shall replace and supersede those prescribed in Column A with effect from one (1) year after the date of registration of this agreement.

	<u>\$Per Fortnight</u>	
	Column A	Column B
A. FOOD & BEVERAGE		
1. Bar Attendant (Grade 1) ...	804.60	836.80
2. Bar Attendant (Grade 2) ...	819.00	851.80
3. Head Bar Attendant ...	868.80	903.60
4. Cellarperson ...	823.10	856.00
5. Waiter/Waitress ...	788.30	819.80
6. Steward/Stewardess ...	788.30	819.80
7. Head Waiter/Waitress ...	851.30	885.40
8. Head Steward/Stewardess ...	851.30	885.40
9. Snack-Bar Attendant ...	788.30	819.80
10. Bar Useful ...	781.50	812.80
11. Host/Hostess ...	851.30	885.40
B. HOUSE		
1. Housekeeper ...	868.80	903.60
2. Porter ...	781.50	812.80
3. Room Attendant ...	781.50	812.80
4. Timekeeper ...	804.60	836.80
<u>\$Per Fortnight</u>		

	Column A		Column B			\$Per Fortnight	
	Column A	Column B	Column A	Column B		Column A	Column B
C. KITCHEN							
1. Chef	...	910.00	946.40		2. Inspector		
2. Qualified Cook	...	851.30	885.40		On commencement	...	1110.90 1155.30
3. Cook Employed Alone	...	806.00	838.20		On completion 12 months service	...	1132.60 1177.90
4. Breakfast and/or Other Cook...	...	798.20	830.10		On completion 24 months service	...	1176.10 1223.10
5. Kitchen Hand	...	781.50	812.80		On completion 48 months service and thereafter	...	1197.80 1245.70
6. Qualified Butcher	...	851.30	885.40		3. Keno Runner	...	785.40 816.80
7. Other Butcher	...	824.50	857.50		4. Keno Operator		
D. MISCELLANEOUS							
1. Cafeteria Attendant (Grade 1)...	...	788.30	819.80		On commencement	...	785.40 816.80
2. Cafeteria Attendant (Grade 2)...	...	798.20	830.10		On completion 3 months probation	...	870.20 905.00
3. Commissionaire	...	781.50	812.80		On completion 12 months service	...	909.50 945.90
4. Valet/Carparking Attendant	...	781.50	812.80		On completion 24 months service and thereafter	...	946.40 984.30
5. Storeperson	...	798.20	830.10		5. Video Attendant		
6. Laundry Attendant (Grade 1)...	...	781.50	812.80		On commencement	...	785.40 816.80
7. Laundry Attendant (Grade 2)...	...	799.80	831.80		On completion 3 months probation	...	870.20 905.00
8. Cleaner	...	781.50	812.80		On completion 12 months service	...	909.50 945.90
9. Gardener	...	781.50	812.80		On completion 24 months service and thereafter	...	946.40 984.30
10. Qualified Gardener	...	937.00	974.50		6. Count Team		
11. Groundsperson	...	781.50	812.80		On commencement	...	785.40 816.80
12. General Hand	...	781.50	812.80		On completion 3 months probation	...	870.20 905.00
13. Seamstress	...	856.30	890.60		On completion 12 months service	...	909.50 945.90
14. Wardrobe Attendant	...	781.50	812.80		On completion 24 months service and thereafter	...	946.40 984.30
15. Guest Services Officer	...	851.30	885.40		7. Change Booth Cashier		
16. Cashier	...	804.60	836.80		On commencement	...	785.40 816.80
(a) In-Charge Rates							
An employee who is appointed and placed in charge of other employees shall be paid the following rates in addition to his/her ordinary time rate of pay—							
		\$Per Fortnight					
		Column A	Column B				
(i) if placed in charge of less than 6 employees	...	19.30	20.10		On completion 3 months probation	...	870.20 905.00
(ii) if placed in charge of 6-10 employees	...	26.00	27.00		On completion 12 months service	...	909.50 945.90
(iii) if placed in charge of 11-20 employees	...	30.10	31.30		On completion 24 months service and thereafter	...	946.40 984.30
(iv) if placed in charge of more than 20 employees	...	50.30	52.30		8. Main Cage Cashier		
Provided that these additional rates shall not be payable to any employee employed in the classifications of Chef, Housekeeper, Head Waiter, Head Waitress, Head Steward, Head Stewardess, Head Bar Attendant and Casino Operations Employees.							
(b) Service Payments							
In addition to the wage rates prescribed in Sections A, B, C and D of this subclause, all employees (other than Apprentices) employed on a full-time basis, shall be paid Service Payments at the following rates—							
		\$Per Fortnight					
		Column A	Column B				
After 1 year of service	...	15.00	15.60		On commencement	...	1089.70 1133.30
After 2 years of service	...	23.00	23.90		On completion 12 months service	...	1110.90 1155.30
After 3 years and subsequent years of service	...	30.90	32.10		On completion 24 months service	...	1176.10 1223.10
					On completion 48 months service and thereafter	...	1197.80 1245.70
E. CASINO OPERATIONS							
		\$Per Fortnight					
		Column A	Column B				
1. Croupier/Dealer					9. Camera Surveillance Operator		
On commencement	...	785.40	816.80		On commencement	...	1089.70 1133.30
On completion 3 months probation	...	1019.70	1060.50		On completion 12 months service	...	1110.90 1155.30
On completion 12 months service	...	1040.90	1082.50		On completion 24 months service	...	1176.10 1223.10
On completion 18 months service	...	1062.40	1104.90		On completion 48 months service and thereafter	...	1197.80 1245.70
On completion 24 months service and thereafter	...	1083.80	1127.20		10. Security Officer		
					On commencement	...	872.30 907.20
					On completion 3 months probation	...	917.30 954.00
					On completion 12 months service	...	964.80 1003.40
					On completion 24 months service and thereafter	...	1040.90 1082.50

Provided that an employee appointed as a Senior Security Officer shall, in addition to the appropriate Security Officers' rate receive an additional payment of—

- (i) \$50.30 per fortnight, from the date of registration of this agreement and for a period of one (1) year; and
- (ii) \$52.30 per fortnight from one (1) year after the date of registration of this agreement

which shall be paid for all purposes of the agreement.

Notwithstanding the provisions contained in Section E of this subclause, employees engaged in the classifications described below on a casual contract of service in accordance with the provisions of Clause 14—Casual Employees of this agreement shall—

- (a) in the case of employees engaged prior to the registration of this agreement in the classifications of Croupier/Dealer, Keno Operator, Video Attendant, Count Team, Change Booth Cashier and Security Officer, move from their "on commencement" wage increment to the next wage increment after performing 494 hours of work, but in any event not before three months of service, and not later than six months of service.
 - (b) in the case of employees engaged subsequent to the registration of this agreement, in the following classifications, move successively from their "on commencement" wage increment to the next wage increment as follows—
 - (i) Croupier/Dealer
 - After 494 hours, but in any event not before three months of service and not later than six months of service; and thereafter
 - After 1976 hours but in either event not before 12 months of service and not later than 24 months of service; and thereafter
 - After 2964 hours but in any event not before 18 months of service and not later than 36 months of service; and thereafter
 - After 3952 hours but in either event not before 24 months of service and not later than 48 months of service.
 - (ii) Keno Operator/Video Attendant/Count Team/Change Booth Cashier/Security Officer
 - After 494 hours, but in either event not before three months of service and not later than six months of service; and thereafter
 - After 1976 hours, but in any event not before 12 months of service and not later than 24 months of service; and thereafter
 - After 3952 hours, but in either event not before 24 months of service and not later than 48 months of service.
 - (iii) Inspector/Main Cage Cashier/Surveillance Operator
 - After 1976 hours, but in either event not before 12 months of service and not later than 24 months of service; and thereafter
 - After 3952 hours but in either event not before 24 months of service and not later than 48 months of service; and thereafter
 - After 7904 hours, but in either event not before 48 months of service and not later than 96 months of service.
- (2) Classifications
- (a) "Bar Attendant—Grade 1" shall be an employee over the age of 18 years who serves liquor for sale from behind a bar counter, and shall include an employee employed in the sale of liquor from a bottle department.
 - (b) "Bar Attendant—Grade 2" shall be an employee over the age of 18 years who in addition to performing the normal duties of a "Bar Attendant—Grade 1", as defined in (a) hereof, shall be required by the Company to have a knowledge of the preparation and/or mixing of drinks and where necessary carry out such duties.

- (c) "Qualified Butcher" shall be a butcher who has completed a trade test at a recognised school or college acceptable to the Company.
- (d) "Cafeteria Attendant—Grade 1" shall be an employee serving, and/or receiving money from employees for snacks or meals.
- (e) "Cafeteria Attendant—Grade 2" shall be an employee who in addition to the duties of a "Cafeteria Attendant—Grade 1", assists in the preparation of snacks and meals served to employees.
- (f) "Cellarperson" shall be an employee employed in charge of, or responsible for the contents of a cellar or liquor store.
- (g) "Cleaner" shall be an employee who does general cleaning duties in or about the resort complex.
- (h) "Chef" shall be an employee appointed as such and shall be an employee who is a "Qualified Cook" (as defined in (i) hereof).
- (i) "Qualified Cook" shall be an employee who has completed and can produce appropriate documentary evidence to the Company to the effect that he or she has successfully completed an apprenticeship in cooking at an approved or recognised school or college, or who can provide documentary evidence of having served at least 6 years in Her Majesty's Armed Forces in the classification of Cook.
- (j) "Breakfast Cook" shall be an employee (other than a Chef, Qualified Cook or Cook Employed Alone) who is responsible for the preparation of breakfasts.
- (k) "Other Cook" shall be an employee who assists in the cooking and preparing of meals.
- (l) "Cook Employed Alone" shall be an employee who is employed when no other cook is employed during their shift.
- (m) "Gardener" shall be an employee required to carry out duties incidental to the maintenance of gardens and the surrounds at the resort and who may be required to carry out other duties but shall not include greenkeeping staff or other persons who have completed a trade or recognised course in horticulture.
- (n) "Qualified Gardener" shall be a gardener who has completed a suitable course in horticulture at a recognised school or college acceptable to the Company.
- (o) "General Hand" shall be an employee engaged to perform general duties in and around the resort but not including cooking, waiting, dispensing of liquor or other specialised functions.
- (p) "Housekeeper" shall be an employee who is required by the Company to be in charge of Room Attendants and/or other employees.
- (q) "Snack Bar Attendant" shall be an employee serving and/or receiving money from the public for snacks or meals.
- (r) "Head Waiter, Head Waitress, Head Steward or Head Stewardess" shall be an employee required by the Company to be in charge of other Waiters, Waitresses, Stewards or Stewardesses.
- (s) "Head Bar Attendant" shall be a Grade 2 Bar Attendant required by the Company to be in charge of other Bar Attendants.
- (t) "Laundry Attendant—Grade 1" shall be an employee required to launder, wash, clean, dry clean, and maintain Company uniforms and other items.
- (u) "Laundry Attendant—Grade 2" shall be an employee required to operate specialised equipment in the process of maintaining and dry cleaning Company uniforms and other items.
- (v) "Room Attendant" shall be an employee required to clean and service resort residential accommodation.
- (w) "Wardrobe Attendant" shall be an employee who receives, distributes and maintains employee clothing, uniforms and equipment.
- (x) "Waiter or Waitress" shall be an employee who attends to the needs of other guests at a table and/or performs room service duties.

- (y) "Guest Services Officer" shall be a person who attends to the needs of patrons including providing information and conducting tours.
- (z) "Storeperson" shall be a person employed in charge of and/or responsible for the contents of a store not being a place where alcoholic beverages or liquors are kept.
- (aa) "Bar Useful" shall be an employee required to perform duties associated with bar and waiting work. Such duties include the wiping of tables or bar tops, collection of glasses or plates and the cleaning of bar mats or other general duties of a similar nature.
- (ab) "Change Booth Cashier" shall be an employee responsible for the use of and accounting for change and/or being responsible for machine payouts.
- (ac) "Main Cage Cashier" shall be an employee responsible for the receiving, disbursing, reconciling and controlling receipt and issue of gaming chips to gaming tables from the Casino Cage and for exchanging chips for currency from players reconciling and controlling their own float and for recording all transactions therein.
- (ad) "Count Team" shall be employees responsible for the conduct of a full count of moneys received via gaming table drop boxes and the recording of these moneys.
- (ae) "Croupier/Dealer" shall be an employee required to deal one or more particular games to a required standard.
- (af) "Inspector" shall be an employee who is responsible for supervising a particular game or number of games so as to ensure that correct procedures and standards are observed by croupiers/dealers. Provided that the number of games supervised shall be at the absolute discretion of the Company having full regard to requirements of the Casino Control Act 1984 as amended and regulations thereto. Such employee shall also be responsible for attempting to settle minor disputes and to guide or liaise with croupier/dealers in the performance of their duties.
- (ag) "Keno Operator" shall be an employee responsible for receiving keno tickets and fees from keno patrons and keno runners, and to conduct keno games.
- (ah) "Keno Runner" shall be an employee responsible for collecting keno tickets and fees from patrons in various parts of the complex and deliver to the keno game.
- (ai) "Security Officer" shall be an employee engaged to enforce dress, behaviour and entry requirements at the resort, and to carry out routine security functions throughout the resort.
- (aj) "Senior Security Officer" shall be an employee who is appointed as such and is responsible for the enforcement of such security measures throughout the resort as may be directed from time to time.
- (ak) "Video Attendant" shall be an employee responsible for explaining the workings of video machines to patrons and to assist with change for customers at machines.
- (al) "Camera Surveillance Operator" shall be an employee who monitors the operations of the gaming tables by remote observation including the use of electronic equipment.
- (am) "Valet/Carparking Attendant" shall be an employee engaged in and around the Resort in the direction and/or parking of vehicles.

6.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the provisions of this agreement, no employee (including an apprentice), twenty-one years of age or over shall be paid less than the minimum rates prescribed by the Minimum Conditions of Employment Act, 1993 as his/her ordinary rate of pay in respect of the ordinary hours of work prescribed by this agreement, but that minimum rate of pay does not apply where the ordinary time rate of pay including any part thereof payable in addition to the agreement rate is not less than such minimum rates.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this agreement.

Notwithstanding the foregoing, where in this agreement an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this agreement for the classification in which the employee is employed.

7.—JUNIOR EMPLOYEES

(1) Subject to the Liquor Licensing Act 1988, and the Casino Control Act, employees under the age of 19 years may be employed as junior employees in any of the occupations covered by this agreement, other than an apprenticeship trade, in the proportion of one junior to every two, or fraction of two, adult employees employed in the same occupation, provided that this ratio may be altered by written agreement between the Company and the Union. Provided further, that no junior female employee under the age of 18 years shall be employed in the classification of Room Attendant.

(2) The minimum fortnightly rates of wages for work in ordinary time to be paid to junior employees shall be as follows—

	Percentage of the lowest adult male or female total rate %
Under 18 years of age	70
Between 18 and 19 years of age	80
At 19 years of age	Full Adult Wages

provided that any junior employee employed in the classifications Bar Attendant, Cellarperson or Casino Operations shall be paid full adult rates.

8.—APPRENTICES

(1) The provisions of the Apprenticeship Regulations of 1981 made under the Industrial Training Act 1975, as varied from time to time are hereby incorporated in and form part of this clause.

(2) Apprentices may be taken in the ratio of one apprentice for every two or fraction of two (the fraction being not less than one) tradesman.

(3) An apprentice shall be paid a percentage of the rate appropriate to a "Qualified Cook", or "Qualified Butcher" as the case may be in accordance with the following scale—

(a) Four Year Term	%
1st year	42
2nd year	55
3rd year	75
4th year	88
(b) Three and a Half Year Term	
First six months	42
Next year	55
Next following year	75
Final year	88
(c) Three Year Term	
First year	55
Second year	75
Third year	88

9.—DEFINITIONS

(1) "Company" shall mean Burswood Resort (Management) Limited in its capacity as Manager of the Burswood Property Trust.

(2) "Union" shall mean the Federated Liquor and Allied Industries Employees' Union of Australia, Western Australia Branch, Union of Workers.

(3) "Daily Spread of Shift" shall mean the time which elapses from the employee's actual starting time to the employee's actual finishing time for the day or shift.

(4) "Ordinary Time Rate" shall mean all rates of pay referred to in Clause 5—Wages of this agreement, as varied from time to time.

(5) "Rostered Fortnight" shall mean those ordinary hours the employee is rostered to work within any given pay fortnight.

(6) "Casino Operations" shall mean persons employed in the classifications of Change Booth Cashier, Main Cage Cashier, Croupier/Dealer, Inspector, Keno Operator/Runner, Count Team, Video Attendant, Camera Surveillance Operator and Security Officer.

(7) "Rostered Day Off" shall mean any period of twenty-four (24) continuous hours off work between the completion of the employee's last rostered ordinary shift of work and the commencement of the employee's next rostered ordinary shift of work.

(8) "Casino Control Act" shall mean the Casino Control Act, 1984 (WA).

10.—CONTRACT OF SERVICE

(1) Except for casual and probationary employees, the Contract of Service shall be on a fortnightly basis.

(2) Subject to subclause (3) below, employment shall be terminated by two weeks' notice on either side, given on any working day during the fortnight or by payment by the Company or the forfeiture by the employee, as the case may be, of two weeks' pay.

(3) Upon commencement of employment, an employee will be subject to a probationary period of three months. The purpose of the probationary period is to enable the Company to assess the suitability of the employee for permanent employment, and to allow the employee to assess whether he/she wishes to become a permanent employee of the Company. At any time prior to the expiry of the probationary period, the Company or the employee may terminate the employment relationship and the contract of employment on one week's notice to the other party, or by payment or forfeiture of one week's pay (as the case may be) in lieu of such notice.

(4) (a) For the purposes of this clause the terms "one week's notice" and "two weeks' notice" shall mean those ordinary hours rostered to work in any given rostered week or fortnight respectively, provided that the period shall not include the shift in which the notice is given.

(b) The terms "one week's pay" and "two weeks' pay" shall mean, respectively, 38 and 76 hours' wages paid at the ordinary time rates, provided that in the case of a part-time employee "one week's pay" and "two weeks' pay" shall mean the number of hours the employee would have normally worked in that particular week or fortnight (as the case may be) calculated at the ordinary hourly rate for part-time employees.

(5) Nothing in this clause shall affect the right of the Company to dismiss any employee without notice for misconduct and in such cases, wages shall be paid up to the time of dismissal only.

(6) The Company may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training.

(7) (a) Notwithstanding the fact that an employee is usually engaged to work in a particular classification ("the principal classification"), he/she may agree to work on a casual basis in a different classification, provided the employee is capable of performing the duties of that classification, and subject to any restrictions provided for in the Casino Control Act.

(b) An employee cannot agree to so work on such a casual basis at any time—

- (i) when he/she is, or will be, rostered to work in their principal classification;
- (ii) when he/she is, or will be, required to work overtime in terms of this agreement.

(c) An employee engaged under this clause is entitled to a minimum break of 8 hours between the completion of the engagement and the commencement of their next rostered shift.

(d) Despite an employee's agreement to so work on such a casual basis, the Company shall, in its sole discretion, decide whether the employee is to so work, and when the employee may so work.

(e) Should an employee so work on such a casual basis, he/she shall be remunerated in accordance with the classification in which he/she is engaged to so work and not in accordance with their principal classification.

(f) Each occasion on which an employee so performs casual work shall be deemed to be a separate and distinct contract of employment between the employee and the Company and no continuing rights and obligations will arise between the employee and the Company as a consequence of an employee so performing such work on one or more occasions.

(g) The provisions of Clause 14—Casual Employees of this agreement shall apply to any work performed by an employee in terms of this sub-clause 10(7).

(h) This clause is not designed to avoid overtime obligations and does not therefore disadvantage other employees.

(8) (a) Should an employee fail to report for work for three consecutive shifts and not make contact with their department to explain their absence, the Company may send a letter to the last known address of the employee, and request that the employee contact the Company within a specified period of time regarding their absence from work.

(b) Should the employee make contact with the Company within the required period with a reasonable explanation for their absence, they shall, upon their return to work, be subject to the Company's normal disciplinary procedures regarding their period of unauthorised absence.

(c) Should the employee fail to make contact with the Company within the required period with a reasonable explanation for their absence, or should the employee not have a reasonable explanation for their absence, the Company may terminate the employee's services.

11.—HOURS

(1) (a) Subject to this Clause and except as provided elsewhere in this agreement, the ordinary hours of work shall be seventy six per fortnight.

(b) The ordinary hours of work shall be exclusive of meal breaks and be so rostered that an employee shall not be required to commence work on more than ten shifts in each fortnight.

(c) Each ordinary hour's work period shall not be less than four nor more than ten ordinary hours, and shall be worked within a spread of shift not exceeding twelve hours.

(d) Where an ordinary hour's work period commences prior to midnight on any day and finishes in the early hours of the next day, that work period shall be deemed to have been worked on the day upon which the ordinary hour's work period commenced. Provided, however, that the employee shall be paid the appropriate additional rates provided by Clause 12.—Additional Rates for Ordinary Hours or Clause 20.—Public Holidays according to the actual hours worked in that work period.

(2) The Company shall have the right to roster the ordinary hours of work for each employee according to the needs of the business, but where the proposed rostered hours of work are to include more than 5 shifts of 10 ordinary hours' duration, the Company shall seek the agreement of each employee.

Provided that once agreement is given by the employee, such agreement is to remain unchanged during the course of employment with the Company.

12.—ADDITIONAL RATES FOR ORDINARY HOURS

(1) An employee who is rostered to work any of his/her ordinary hours prior to 7.00am or after 7.00pm, Monday to Friday, both inclusive shall, in addition to his/her ordinary time rate of pay be entitled to an allowance of—

- (a) from the date of registration of this agreement and for a period of (1) one year, \$1.10 per hour or part thereof; and
- (b) from (1) one year after the date of registration of this agreement, \$1.14 per hour or part thereof

for time worked during such hours.

(2) (a) All ordinary hours worked between midnight Friday and midnight Saturday shall be paid at the rate of time and one half.

(b) All ordinary hours worked between midnight Saturday and midnight Sunday shall be paid at the rate of time and three-quarters, provided that those employees employed in the classifications of Bar Attendant, Head Bar Attendant and Casino Operations shall be paid at the rate of double time.

(c) Any employee who is required to work any of his/her ordinary hours on any day in more than one period, other than for meal breaks as prescribed in Clause 16.—Meal and Rest Breaks of this agreement, shall be paid an allowance of—

- (i) \$1.76 per day, from the date of registration of this agreement and for a period of one year; and,
- (ii) \$1.83 per day from 1 (one) year after the date of registration of this agreement,

for such broken work period worked.

(d) Where a Cleaner is rostered to perform normal duties within the recognised Casino or International Room restroom facilities, and such duties include work of an unusually unsavoury or unhygienic nature, such employee shall, in addition to his/her ordinary time rate of pay be paid a flat allowance of \$5.40 per shift.

13.—OVERTIME

(1) Overtime shall mean all work performed outside of the rostered ordinary hours of work or outside the daily spread of shift and shall be paid at the following rates—

- (a) Monday to Friday, both inclusive, time and one half for the first two hours and double time thereafter.
- (b) Between midnight Friday and midnight Sunday, double time for all hours worked.
- (c) For all work performed on an employee's rostered day off, double time with a minimum payment as for 4 hours work (but subject to subclause (1)(d) below), provided that such 4 hour minimum shall not apply where the overtime is continuous with the previous day's duty.
- (d) Should an employee be required by the Company to attend a departmental meeting or a training course on their rostered day off, they will be paid double time for a minimum period of 2 hours.

(2) (a) An employee working overtime shall be entitled to a 10 consecutive hours break between the time they finish the overtime and the commencement of his/her ordinary hours in the next rostered shift.

(b) Where an employee after having left work for the day, is recalled to work by the Company prior to the commencement of his/her next rostered ordinary shift, the employee shall be paid for all work performed at the rate of double time with a minimum payment as for three hours work. Provided that these provisions shall not apply in the case of any hours which are worked immediately prior to and continuously with an employee's commencement of his/her ordinary hours in the next rostered shift.

(3) All time worked by an employee (not being a casual employee) as overtime as aforesaid shall be paid for at the rates referred to in this clause on the basis that each shift worked shall stand alone.

(4) Provided that the Company may require any employee to work reasonable overtime at overtime rates and such employee shall work in accordance with such provisions.

14.—CASUAL EMPLOYEES

(1) A casual employee shall mean an employee engaged on an hourly contract of service.

(2) Casual employees shall be engaged for a minimum period of 2 consecutive hours on each occasion required.

(3) (a) Casual employees shall be paid at the rate of time and one half for all hours worked, provided that this rate shall increase to double time for employees employed in the classifications of Bar Attendant, Head Bar Attendant and Casino Operations employees, and time and three-quarters for all other employees for all work performed on a Sunday, and to double time and one half for all work performed on the holidays referred to in subclause (1)(a) of Clause 20.—Public Holidays of this agreement.

(b) "Time" as referred to above shall be 1/76th of the fortnightly rate of pay for the classification as prescribed in Clause 5.—Wages of this agreement.

(4) The provisions of Clause 12.—Additional Rates for Ordinary Hours, Clause 18.—Sick Leave, Clause 20.—Public Holidays (except insofar as subclause (1) relates to subclause

(3) of this clause), and Clause 21.—Annual Leave shall not apply to a casual employee.

15.—PART-TIME EMPLOYEES

(1) A part-time employee shall mean an employee who, subject to the provisions of Clause 11.—Hours of this agreement, regularly works less than seventy six hours each fortnight.

(2) A part-time employee shall receive payment for wages, annual leave, holidays, bereavement leave and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each fortnight bears to seventy six hours.

16.—MEAL AND REST BREAKS

(1) (a) Each employee, other than those employed in the classifications of Inspector and Croupier/Dealer, shall be entitled to an unpaid meal break of not less than 30 minutes nor more than 60 minutes which shall commence after completing not less than one hour 30 minutes and not more than 6 hours of any rostered shift. Provided that where it is not possible to grant the meal break during the above prescribed period the said meal break shall be treated as time worked and the employee shall, in addition to ordinary time rates, be paid 50 per cent of the ordinary hourly rate applying to such employee, until such time as the employee is released for a meal, or until the completion of the rostered shift, whichever is the sooner.

(b) The provisions of subclause (a), as they relate to the period in which a meal break shall be taken, may be altered by written agreement between the Company and the Union which written agreement shall then be a bar to any action taken by any person to enforce the provisions of subclause (a) as they relate to the period in which a meal break shall be taken.

(c) Notwithstanding the provisions of subclause (a), a casual employee may nominate not to take the meal break, as provided, and in such circumstances the meal break shall be treated as time worked and paid for as such.

(d) The nomination referred to in subclause (c), shall be in writing and a copy forwarded to the Union and will take effect from the date specified. Such nomination will continue until revoked by the employee in writing. Such written agreement, until revoked, shall then be a bar to any action taken by any person to enforce a meal break for the employee in question.

(2) An employee, other than those employed in the classifications of Inspector, Croupier/Dealer, who is required to commence overtime of at least 2 hours after completing his/her ordinary hours of work for the day, shall be allowed a paid meal break of 20 minutes duration prior to the completion of such overtime, provided that the employee shall be allowed a further paid meal break of 20 minutes duration during any subsequent 4 hours of overtime worked.

(3) In addition to recognised meal breaks, one other break of at least 2 hours during each shift is permissible, excepting for those employees employed in Casino Operations classifications. Such break of 2 hours or more may include a meal break as prescribed in subclause (1).

(4) Employees employed in the classifications of Inspector and Croupier/Dealer shall be entitled to a paid rest break of 15 minutes duration after each completed hour worked.

(5) Each employee, other than those employed in the classifications of Inspector, Croupier/Dealer, Keno Attendant and Keno Runner, shall be entitled to two paid rest breaks of ten minutes duration in each rostered shift to be taken at maximum four hourly intervals. Such rest breaks shall be taken at mutually agreeable times which shall not interfere with the continuity of work where continuity is necessary. Provided that those employees employed in the classifications of Keno Attendant and Keno Runner shall be entitled to two paid rest breaks of 20 minutes duration in each rostered shift to be taken at maximum four hourly intervals as aforesaid.

17.—MEAL MONEY

(1) All employees shall be supplied with one meal free of charge per rostered shift, to be consumed in the employee cafeteria.

(2) Any employee who is required to work overtime for 2 hours or more shall be supplied with a meal free of charge to be consumed in the employee cafeteria. Provided that where

the Company does not supply such a meal the employee shall be paid \$5.42 per meal money.

18.—SICK LEAVE

(1) (a) An employee who is unable to attend or remain at his/her place of employment during ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) An employee shall be entitled to up to 76 hours' paid sick leave for each completed year of service with the Company, which entitlement shall accrue pro rata on a weekly basis.

(c) If in the first or successive years of service with the Company an employee is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate if before the end of the year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unpaid portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence.

(3) To be entitled to payment in accordance with this clause the employee shall, where practicable, advise the Company prior to his/her normal commencement time, of his/her inability to attend work, the nature of the illness or injury and estimated duration of the absence.

(4) (a) Subject to subclause (b), the provisions of this clause shall not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply other evidence of the illness or injury to the satisfaction of the Company;

(b) Provided that an employee shall not be required to produce a certificate from a medical practitioner with respect to absences of one shift or less, provided that such absences do not exceed four shifts in any year of service.

(5) Sickness When on Annual Leave

(a) Subject to satisfactory proof being provided in a certificate of a qualified medical practitioner obtained during the period of illness, any period of annual leave during which the employee is confined to their residence or a hospital as a result of personal ill health or injury, shall be regarded as sick leave.

(b) An application to the Company to grant paid sick leave in place of paid annual leave shall be made within seven days of the employee returning to work.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time they proceeded on annual leave, and shall not be made with respect to fractions of a day.

(d) In any case where this subclause applies, the replaced period of annual leave may be taken by the employee at another time mutually agreed, or failing agreement shall be added to the employee's next period of annual leave.

(6) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken, provided that the annual loading prescribed in Clause 21—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act, nor to employees whose injury or illness is the result of the employee's own misconduct.

19.—BEREAVEMENT LEAVE

(1) An employee shall, on the death of a wife, husband, de facto wife, de facto husband, father, father-in-law, mother, mother-in-law, brother, sister, child, step-child, step-parent, or any person who lived with the employee as a member of the employee's family immediately before that person's death be entitled on notice to leave without deduction of pay for a period not exceeding the number of ordinary hours that would have been worked by the employee in two work periods rostered to be worked by the employee.

(2) Provided that proof of such death shall be furnished by the employee to the satisfaction of the Company on each such occasion.

(3) Provided that this clause shall have no application when the period of leave claimed in accordance with this clause coincides with any other period of leave that the employee concerned may have already taken.

20.—PUBLIC HOLIDAYS

(1) (a) The following days, subject to paragraph (c) shall be observed as paid holidays: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, State Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. All work done on any such day shall be paid for at the rate of double time and a half, with a minimum payment as for 4 hours worked, provided that such 4 hour minimum shall not apply in the case of those hours which are worked continuously with shifts commencing on the preceding day, or ceasing on the following day.

(b) Where an additional public holiday (other than Easter Saturday) is proclaimed or gazetted by the authority of the Commonwealth Government or the State Government, and such holiday is to be observed generally by persons throughout the State, then such day shall be deemed to be a holiday for the purposes of this agreement.

(c) When any of the public holidays mentioned in paragraph (a) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday, and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be observed as a public holiday and paid as such and the day for which it is substituted shall not be observed as a public holiday, and shall be paid at the appropriate rates.

(2) Where an employee's rostered day off coincides with any of the public holidays prescribed in this clause, such employee shall receive eight hours' additional pay at ordinary rates from the Company on the next succeeding pay day.

(3) Provided that when an employee is absent from their employment on only one working day or part of a day before or after a holiday, except on account of illness or other legitimate reason, they shall not suffer loss of payment for more than one day of the holidays.

21.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided, upon the completion of 12 months' continuous service with the Company, and on an annual basis thereafter, each employee (other than a casual employee) shall be entitled to 152 hours annual leave paid at ordinary time rates.

(b) Provided that each employee (other than a casual employee) shall be entitled to 38 additional hours after the completion of 12 months' continuous service with the Company, provided that the 38 additional hours entitlement shall be subject to a flat loading of 17.5 per cent calculated on the employee's ordinary time rate of pay for the prescribed period of absence.

(2) (a) Subject to paragraph (b) of subclause (1) of this clause, during a period of annual leave an employee shall receive a loading of 17.5 per cent calculated on his/her ordinary time rate of pay for the prescribed period of absence. Provided that where the employee would have received any additional rates for work performed in ordinary hours, as prescribed by this agreement, had he/she not been on leave during the relevant period and such additional rates would have entitled the employee to a greater amount than the loading of 17.5 per cent, then such additional rates shall be added to his/her ordinary rate of wage in lieu of the 17.5 per cent loading. Provided further, that if the additional rates would have entitled the employee to a lesser amount than the loading of 17.5 per cent then such loadings of 17.5 per cent shall be added to his/her ordinary rate of wage in lieu of the additional rates.

(b) Upon application and at the Company's discretion, annual leave may be approved and taken to the extent that the employee has accrued such leave in accordance with subclause (1) of this clause, prior to the completion of any 12 month qualifying period, and where such leave is granted the loading prescribed in paragraph (b) of subclause (1) and paragraph (a) of subclause

(2) of this clause, but subject to paragraph (c) of subclause (2) of this clause, shall be paid on a proportionate scale.

(c) Provided that where such leave as prescribed in paragraph (b) of subclause (2) of this clause is granted, any employee whose employment terminates prior to the completion of the said twelve months' service and who has been paid loading in accordance with paragraph (b) of subclause (1) and paragraph (a) of subclause (2) of this clause shall have an amount equal to the loading that has been paid deducted from whatever remuneration is payable by the Company upon their termination.

(d) The loading prescribed within paragraph (b) of subclause (1) and paragraph (a) of subclause (2) of this clause shall not apply to proportionate leave on termination.

(3) (a) Where any prescribed public holiday falls within an employee's period of annual leave, there shall be added to that period one shift being an ordinary working shift for each such holiday observed as aforesaid.

(b) Where a holiday falls as aforesaid and the employee fails, without reasonable cause, proof whereof shall be upon him/her, to attend for work at their ordinary starting time on the working day immediately following the last day of the period of annual leave, they shall not be entitled to be paid for such holiday.

(4) (a) Any employee whose employment terminates after they have completed a twelve month qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment in lieu of that leave and loading, or in a case to which subparagraph (ii) of this subclause applies, in lieu of so much of that leave as they have not been allowed unless—

- (i) they have been justifiably dismissed for misconduct; and
- (ii) the misconduct for which they have been dismissed occurred prior to the completion of that qualifying period.

(b) If after one month's continuous service in any qualifying twelve month period an employee leaves their employment or their employment is terminated by the Company through no fault of the employee, the employee shall be paid 3.65 hours' pay at their ordinary rate of wage in respect of each completed week of service.

(5) (a) Annual leave shall be given and taken in one continuous period, or if the Company and the employee so agree, in two separate periods, provided that one such period shall be of at least 38 hours duration.

(b) Provided that where necessary, the Company and the employee may mutually agree on annual leave being taken in a manner other than set out in paragraph (a) of this subclause so as to meet some special need of the employee. Provided that this provision shall not be used so as to defeat the true purpose of annual leave.

(c) Provided that by prior arrangement between the Company and the employee, annual leave may be allowed to accumulate for no more than 2 years so as to meet some special need of the employee. Where such annual leave is allowed to accumulate, the ordinary wage for that leave shall be the ordinary wage applicable to the employee at the date at which they became entitled to leave unless the Company agrees in writing that the wage be that applicable at the date the leave commences.

(6) Any time in respect of which an employee is absent from work, shall not count for the purpose of determining his right to annual leave, unless it is an absence during which the employee is entitled to claim sick pay or time spent on holidays, annual leave, long service leave and bereavement leave as prescribed by this agreement.

22.—LONG SERVICE

The Long Service Leave provisions published in Volume 77 of the Western Australian Industrial Gazette, at pages 1-4 inclusive are hereby incorporated in, and shall be deemed to be part of this agreement.

23.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly into a bank account, or any other account, nominated and available to the employee.

(2) An employee who lawfully terminates his/her employment, or is dismissed for reasons other than misconduct, shall be paid all wages due on the next working day following cessation, provided that if the next working day is a Saturday or Sunday or public holiday, then payment shall be made to the employee on the next weekday following that Saturday, Sunday or public holiday.

(3) At the time of being paid each employee shall be issued with a statement by the Company showing gross wages and allowances due to him/her and all deductions made therefrom.

(4) The Company shall pay all wages into the employee's nominated account on a day other than Saturday or Sunday and no later than five days after the end of any rostered fortnight.

24.—BAR WORK

(1) Any employee, other than a Bar Attendant, who in addition to his/her normal duties, is required to dispense liquor from a bar, shall in addition to his/her ordinary time rate of pay, be paid a flat allowance of 72 cents per shift for the performance of such additional duties.

(2) Any employee employed as a Bar Attendant, who is required in addition to his/her normal duties, to be responsible for and/or the purchasing of stock, shall be paid in addition to his/her ordinary time rate of pay an allowance of \$11.90 per fortnight.

25.—HIGHER DUTIES

(1) An employee, who on any rostered shift performs work for 4 or more hours, on duties carrying a higher prescribed rate of wage than that in which they are normally engaged, or on duties carrying the allowance referred to in sub-clause (4), shall be paid the higher wage or allowance (as the case may be) for such shift. If work is performed for less than 4 hours on any rostered shift they shall be paid the higher wage or the allowance (as the case may be) for the time so worked.

(2) Where an employee employed in the classification of Croupier/Dealer is required to perform work of a higher classification in accordance with subclause (1) of this clause for ordinary hours worked in the 3 months prior to proceeding on any annual leave the employee shall be paid such proportion of their annual leave at the same higher rate as corresponds to those hours worked in the preceding 3 months on work of a higher classification.

(3) Any employee who is required to perform duties carrying a lower prescribed rate of wage, shall do so without any loss of pay.

(4) Notwithstanding subclause (1) of this clause, any employee who is required to relieve in a managerial position shall be paid an allowance of 20% of the employee's ordinary hourly rate of pay. Such allowance shall be regarded as part of the weekly wage for all purposes of this agreement.

26.—UNIFORMS AND LAUNDERING

(1) Where the Company requires an employee to wear a special uniform in the performance of their duties such special uniform shall be provided by the Company and shall at all times remain the Company's property. A special uniform shall consist of such articles of clothing as monogrammed or coloured jackets, dresses, blouses, overalls, aprons, caps, collars, cuffs, or other special apparel which the Company may require an employee to wear whilst on duty; provided that the ordinary apparel usually worn by Waiters and Stewards shall not be deemed to be special uniforms within the meaning of this clause.

(2) Where a cook wears the ordinary apparel usually worn by cooks, such as black and white check or white trousers, white coats, white shirt, white apron and cap, such garments shall be laundered at the Company's expense or otherwise the employee shall be paid \$6.40 per fortnight as laundry allowance.

(3) Subject to subclause (2) hereof, where the Company requires any of the articles of clothing to be worn as described in subclause (1) of this clause, then such clothing shall be laundered at the Company's expense or otherwise shall be paid \$4.20 per fortnight as a laundry allowance.

(4) Where such special uniforms are supplied, employees shall be obliged to wear special uniforms at all times and in line with Company standards.

27.—PROTECTIVE CLOTHING

(1) Any employee required to wash dishes, clean toilets or otherwise handle detergents, acids, soaps or any injurious substances shall be supplied with rubber gloves free of charge by the Company on a fair wear and tear basis.

(2) Where an employee's normal occupation requires them to work in the rain, or where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the Company on a fair wear and tear basis.

(3) Where in the course of performing normal duties an employee is unable to avoid their feet becoming wet, they shall be supplied with suitable protective footwear free of charge by the Company on a fair wear and tear basis.

(4) Notwithstanding subclauses (1), (2) and (3) of this clause, should the Company deem it necessary that protective clothing or equipment be necessary in order for an employee to carry out their normal duties, such clothing or equipment shall be supplied by the Company free of charge.

(5) Provided that such protective clothing or equipment shall at all times remain the Company's property and employees shall be obligated to wear and use such protective clothing or equipment as required.

28.—EMPLOYEES' EQUIPMENT

All knives, choppers, tools, brushes, towels and other utensils, implements, and materials which may be required to be used by an employee for the purpose of carrying out his/her duties, shall be supplied by the Company free of charge. Provided that where an employee is required by the Company to use his/her own knives they shall be paid an allowance of—

- (a) \$9.00 per fortnight for a period of one year commencing on the date of registration of this agreement, and
- (b) \$9.40 per fortnight from one year after the date of registration of this agreement.

29.—RECORD

(1) The Company shall keep such records as may be necessary so as to readily ascertain the following information—

- (a) The full name, and occupation of each employee and whether the employee is employed on either a full-time, part-time or casual contract of service.
- (b) The time each employee commences and finishes work each day including any breaks in shift. Provided that it shall be the employee's responsibility to complete such time sheets as may be required by the Company.
- (c) The number of ordinary hours and the number of overtime hours worked each day by each employee and the totals for each pay period.
- (d) The wages and (if any) allowances and overtime paid to each employee each pay period and any deductions made therefrom.
- (e) The age of any employee employed as a junior worker under the provisions of Clause 7.

(2) The record system shall be open for inspection to a duly accredited official of the Union at the Company's office, or other convenient place, from Monday to Friday, both inclusive between the hours of 9.00am and 5.00pm. Such representative shall, subject to subparagraph (4), be permitted reasonable time to inspect the records and if required may take any extract or copy of the information contained therein.

(3) The Company shall retain such record for a minimum period of seven (7) years.

(4) The following provisions shall apply to the inspection of records—

- (a) the power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—
 - (i) is not a member of the Union; and
 - (ii) has notified the Company in writing that the employee or former employee does not consent to a representative of the Union having access to those records;

- (b) the power of inspection may only be exercised by a representative of the Union authorised for the purpose in accordance with the rules of the Union;
- (c) the representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records;
- (d) a person who has given a notification referred to in subparagraph (a)(ii) may, by notice in writing to the Company, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect;
- (e) before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to the Company;
- (f) the Company shall endeavour to—
 - (i) maintain the time and wages records of employees in such a manner that access by a representative of the Union to the records of employees does not give access to records of employees who are not members of the Union and have notified the Company that they do not consent to a representative of the Union having access to the records;
 - (ii) ensure that a representative of the Union does not obtain access to the records of employees who are not members of the Union and have notified the Company that they do not consent to a representative of the Union having access to the records; and
 - (iii) ascertain whether an employee or prospective employee does not consent to a representative of the Union having access to the time and wages records of the employee or prospective employee.

30.—ROSTER

(1) A roster of the working hours shall be exhibited in such place as it may conveniently and readily be seen by each employee concerned.

(2) Such roster shall show—

- (a) the full name and occupation of each employee,
- (b) the hours to be worked by each employee each shift.

(3) The roster shall be open for inspection to a duly accredited official of the Union at such times as the records in Clause 29 are open for inspection.

(4) The roster shall be drawn up in such a manner so as to show the working hours of each employee (other than a casual employee) for at least a fortnight in advance of the date of the roster, and may only be altered on account of sickness of any employee or a cause over which the Company has no control, or by the Company giving at least seven days' notice to the employee concerned, or by the mutual consent of the Company and the employee concerned.

31.—CHANGE AND RESTROOMS

The Company shall provide change and rest rooms for employees, which shall be adequately lighted and ventilated and shall be sufficiently roomy to accommodate all employees likely to use them at any one time. Such rooms shall be equipped with steel or vermin-proof lockers, suitable floor coverings and hot and cold shower facilities.

32.—FIRST AID

The Company shall provide a first aid facility for the use of employees in some reasonably accessible location within the resort.

33.—UNION NOTICES

The Company shall provide a notice board in a reasonably accessible place within the resort for the posting of Union notices signed by the Secretary or other duly accredited official of the Union.

34.—UNION DELEGATES AND MEETINGS

(1) The employees shall have the right to elect Union delegates, in agreed work areas, and upon notification by the Union to the Company, such delegates shall be recognised by the Company.

(2) Delegates accredited in accordance with subclause (1) shall be allowed the necessary time during working hours to interview the appropriate Company representative on matters affecting the employees so represented within their designated work area.

(3) Prior to the intended dismissal of a Union delegate the Company shall notify the Union accordingly of the reasons for such dismissal.

(4) The Union shall be allowed to convene one "Union Meeting" each year, during ordinary working hours, in accordance with the following conditions—

- (a) At least fourteen days' written notice of such meeting is given to the Company by the Secretary of the Union.
- (b) The duration of the meeting shall be 3 hours as a maximum, the employees returning to duty by noon.
- (c) Payment at ordinary time rate of pay to be made for the period that employees were rostered for duty.
- (d) Such Union meetings shall be held on weekdays, on other than a Thursday or Friday.
- (e) Payment of wages shall be made only upon the Company being in receipt of satisfactory evidence of the employee's attendance at the meeting.

35.—UNDER RATE EMPLOYEES

Any employee who may by reason of old age or infirmity be unable to earn the minimum wage, may be paid such lesser wage as may from time to time be agreed upon in writing between the Union and the Company.

36.—BREAKDOWNS OR STOPPAGES

The Company shall be entitled to deduct payment for any day or portion of any day upon which the employee cannot be usefully employed because of any strike, ban or limitation, imposed by the Union or by any other Association or Union through the breakdown of the Company's machinery or any stoppage of work by any cause for which the Company cannot reasonably be held responsible.

37.—RIGHT OF ENTRY

(1) Subject to the provisions of the Casino Control Act and the Industrial Relations Act 1979 (WA), the Secretary or any other duly accredited official of the Union shall have the right to enter the Company's premises during such hours when work is being performed by employees covered by this agreement, but shall not in any way interfere with the work so being performed.

(2) Such officials shall not, without permission of the Company, interview employees at any time other than recognised meal or rest breaks.

38.—BREAKAGES

The Company shall not charge a sum against, nor deduct any sum from the wages of an employee in respect of breakages of crockery or other utensils, except in the case of wilful misconduct.

39.—RESOLUTION OF DISPUTES

Any problem or dispute arising under the agreement during the currency of the agreement shall be dealt with as follows—

- (a) The matter should first be discussed between the employee concerned and their immediate supervisor with the view to resolution of the matter in question.
- (b) If at this point the matter is not resolved to the satisfaction of the employee concerned, the matter shall be referred to the Employee Counsellor or other appropriate officer of the Company for further investigation and discussion.
- (c) If the matter should still not be settled, the employee concerned shall be referred to the Human Resources Manager for further discussion.
- (d) Should the employee concerned so desire, the appropriate Union delegate may accompany such employee and participate in any discussions or investigations prescribed in subclauses (b) and (c) of this subclause. If for any reason it is the intention of the Company to give an employee a written warning, such employee shall have the right to have a

Union delegate present at such time as the written warning is issued.

- (e) If the matter is still not satisfactorily resolved, it shall be formally submitted by the Secretary or other official of the Union to the Company for consideration and resolution. Should the matter, after this, still not be satisfactorily resolved, it may be referred to the West Australian Industrial Relations Commission.
- (f) Until the matter is determined in accordance with the above procedures, work shall continue normally. All parties to the agreement, the Company, its officials, the Union and its members will take all possible action to settle any dispute within 7 days of notification of the dispute to the Human Resources Manager.
- (g) No party shall be prejudiced as to the final settlement by continuance of work in accordance with this clause.

40.—LIMITATION OF WORK

(1) No female employee shall be required to clean out male public restroom facilities or male toilets and bathrooms where they are used on a continual basis throughout the resort. Provided that this provision shall not apply in the case of female employees cleaning toilets attached to bedrooms or suites, or administration areas.

(2) Employees classified as Bar Attendants shall not be required to clean windows, or scrub or wash floors.

(3) No female employee under the age of 18 years shall be required to lift or carry weights in excess of 11 kilograms, and no female employee over the age of 18 years of age shall be required to lift or carry weights in excess of 16.5 kilograms.

41.—TRAVELLING FACILITIES

Where an employee is required to commence work before or cease work beyond his/her normal time of commencement or cessation of work as the case may be, and his/her usual or alternative reasonable means of transport are not available, the Company shall provide transport for such employee from or to his/her home or usual place of residence.

42.—PARENTAL LEAVE

(1) Parental leave shall include maternity leave, paternity leave and adoption leave.

(1A) Eligibility for—

(a) Maternity Leave

A female employee who becomes pregnant shall, upon production to the Company of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with the Company immediately preceding the date upon which she proceeds upon such leave.

(b) Paternity Leave

A male employee shall, upon production to the Company of a certificate from a duly qualified medical practitioner stating the presumed date of confinement of the employee's spouse or de facto spouse, be entitled to paternity leave provided that he has had not less than 12 months' continuous service with the Company immediately preceding the date upon which he proceeds upon such leave.

(c) Adoption Leave

An employee with whom a child has been placed with a view to the adoption of the child by the employee shall be entitled to adoption leave provided that he or she has had not less than 12 months' continuous service with the Company immediately preceding the date upon which he or she proceeds upon such leave, and provided that the child

- (i) is not the natural child or the step-child of the employee or the employee's spouse or de facto spouse; and
- (ii) is less than 5 years of age; and
- (iii) has not lived continuously with the employee for 6 months or longer.

For the purposes of this clause—

- (i) An employee shall include a part-time employee but shall not include a casual employee.
- (ii) Maternity leave, paternity leave and adoption leave shall mean unpaid maternity leave, paternity leave and adoption leave.

(2) Period of Leave and Commencement of Leave—

- (a) Subject to subclauses (3) and (6) hereof, the period of parental leave shall be for an unbroken period of up to 52 weeks and shall, in the case of maternity leave, include a period of 6 weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of 6 weeks' compulsory leave to be taken immediately following confinement unless, in the case of the period before the presumed date of confinement, a medical practitioner has certified that the employee is fit to work.
- (b) An employee shall, not less than 10 weeks prior to the intended date of commencement of parental leave, give notice in writing to the Company stating his or her intention to take such leave.
- (c) An employee shall give not less than 4 weeks' notice in writing to the Company of the date upon which he or she proposes to commence parental leave, stating the period of leave to be taken.
- (d) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the employee's or the employee's spouse's or de facto spouse's confinement occurring earlier than the presumed date.
- (e) An employee who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the Company of particulars of any period of parental leave taken or to be taken by the employee's spouse or de facto spouse in relation to the same child. Such notice is to be supported by a statutory declaration by the employee as to the truth of the particulars notified.
- (f) An employee is not entitled to take parental leave at the same time as the employee's spouse or de facto spouse except in respect of one week's parental leave
 - (i) taken by the male parent immediately after the birth of the child; or
 - (ii) taken by the employee and the employee's spouse or de facto spouse immediately after a child has been placed with them with a view to their adoption of the child.
- (g) The entitlement to parental leave is reduced by any period of parental leave taken by the employee's spouse or de facto spouse in relation to the same child, except the period of one week's leave referred to in subparagraph (f).

(3) Transfer to a Safe Job in the case of Maternity Leave—

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to an employee make it inadvisable for the employee to continue at her present work, the employee shall, if the Company deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the Company may require the employee to take leave for such period as is certified necessary by the duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Parental Leave—

- (a) Provided the addition does not extend the parental leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the Company, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

- (b) The period of leave may, with the consent of the Company, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Parental Leave—

- (a) Parental leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee or that of the spouse or defacto spouse of an employee terminates other than by the birth of a living child.
- (b) Where the pregnancy of an employee then on maternity leave, or that of an employee's spouse or defacto spouse terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the Company which shall not exceed 4 weeks from the date of notice in writing by the employee to the Company that he or she desires to resume work.

(6) Special Maternity Leave and Sick Leave—

- (a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
 - (i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work;
 - (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.
- (b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.
- (c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.
- (d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and wage to that of her former position.

(7) Parental Leave and Other Leave Entitlements—

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof do not exceed 52 weeks—

- (a) An employee may, in lieu of or in conjunction with parental leave, take any annual leave or long service leave or any part thereof to which he or she is then entitled.
- (b) Paid sick leave or other paid authorised absences (excluding annual leave or long service leave), shall not be available to an employee during his or her absence on parental leave.

(8) Effect of Parental Leave on Employment

Notwithstanding any other provisions to the contrary, absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the agreement.

(9) Termination of Employment—

- (a) An employee on parental leave may terminate his or her employment at any time during the period of leave by notice given in accordance with this agreement.
- (b) The Company shall not terminate the employment of an employee on the ground of her pregnancy or on the ground of his or her absence on parental leave, but otherwise the rights of the Company in relation to termination of employment are not hereby affected.

	<u>Financial Year</u>
2000-2001	8%
2001-2002	8%
2002-2003 and following years	9%

(10) Return to Work after Parental Leave—

- (a) An employee shall confirm his or her intention of returning to his or her work by notice in writing to the Company given not less than 4 weeks prior to the expiration of the period of parental leave.
- (b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which he or she held immediately before proceeding on parental leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, he or she shall be entitled to a position as nearly comparable in status and wage to that of his or her former position.

(2) It is noted that the Act excludes the wages of certain employees, which means there is no shortfall amount in relation to these employees and that the Company will not make any superannuation contribution under sub-clause (1)(b) in relation to them. These currently include those over the age of 65, non-residents, part-time employees under the age of 18 and an employee paid less than \$450 in a month.

(3) The Company will make the superannuation contribution payable under sub-clause (1) to a complying superannuation fund selected by it, unless it is a legal requirement for an employee to select the superannuation fund to which the contribution is made, in which case the contribution will be made to the superannuation fund selected by the employee. Until determined otherwise by the Company or contrary to law, the superannuation contributions will be made to the Host Plus Superannuation Fund.

(11) Replacement Employees—

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave.
- (b) Before the Company engages a replacement employee under this subclause, the Company shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before the Company engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his or her rights under this clause, the Company shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (d) Provided that nothing in this subclause shall be construed as requiring the Company to engage a replacement employee.
- (e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where his or her employment continues beyond the 12 months' qualifying period.

44.—SINGLE ENTERPRISE

(1) It is agreed by the Company and the Union that this agreement applies in respect of a single enterprise as contemplated in Section 41A of the Industrial Relations Act 1979 (WA).

(2) It is estimated that 2,261 employees will be bound by this agreement upon registration.

45.—NO EXTRA CLAIMS

The Company and the Union agree that there will be no extra claims for the term of this agreement and whilst it continues in force.

Executed as an agreement.

Dated this 28th day of July 1997

The seal of the)	
FEDERATED LIQUOR AND ALLIED)	
INDUSTRIES EMPLOYEES UNION)	...Signed....
OF AUSTRALIA, WESTERN)	President
AUSTRALIAN BRANCH, UNION OF)	
WORKERS was affixed in the presence)	
of LYNETTE ANN SHAW (President))	
and EUGENE LESLIE FRY (Secretary))	...Signed....
		Secretary
Signed for and on behalf of)	
BURSWOOD RESORT)	
(MANAGEMENT) LIMITED by PAUL)	
ANTHONY KENNEDY (Human)	
Resources Manager) in the)	...Signed....
presence of:)	Paul Anthony
		Kennedy

.....Signed.....

Witness
Justin Seal
Human Resources Officer
Unit 1/53 Colombo Street
Victoria Park WA

43.—SUPERANNUATION

(1) The Company will make a superannuation contribution equal to the greater of—

- (a) 3% of ordinary times earnings per week for full-time and part-time employees who have completed at least four weeks of service with the Company and for casual employees who have completed at least eight weeks of service with the Company, calculated in the case of part-time and casual employees in the proportion that the hours worked bears to 38 hours; and
- (b) the shortfall amount that would otherwise be payable under Section 19 of the Superannuation Guarantee (Administration) Act 1992, as amended (Act). The operation of the Act is to require employers to pay a superannuation guarantee charge equal to the shortfall amount where they do not make a superannuation contribution equal to the following percentage of an employee's wages, where the employer's payroll exceeds \$1 million—

	<u>Financial Year</u>
1997-1998	6%
1998-1999	7%
1999-2000	7%

CARGILL SALT (A DEPARTMENT OF CARGILL AUSTRALIA LIMITED) ENTERPRISE BARGAINING AGREEMENT 1997.

No. AG 138 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cargill Australia Ltd

and

The Australian Workers' Union, West Australian Branch,
Industrial Union of Workers and Others.

No. AG 138 of 1997.

Cargill Salt (A Department of Cargill Australia Limited)
Enterprise Bargaining Agreement 1997.

20 August 1997.

Order.

HAVING heard Ms T. Allen on behalf of the Applicant and Mr D. Bartlem on behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Mr G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr G. McCulloch on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australian, Engineering and Electrical Division, WA Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Cargill Salt (A Department of Cargill Australia Limited) Enterprise Bargaining Agreement 1997 as filed by the parties on the 7th day of July, 1997 and as amended be registered on and from the 14th day of August, 1997.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Cargill Salt (A Department of Cargill Australia Limited) Enterprise Bargaining Agreement 1997. This Agreement replaces the Cargill Salt (A Department of Cargill Australia Limited) Enterprise Bargaining Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Incidence and Parties Bound
4. Date and Period of Operation
5. Relationship to Parent Award
6. Single Bargaining Unit
7. Background
8. Mission Statement
9. Continuous Improvement Process
10. Outcomes
11. Annual Performance Measures
12. Industrial Relations Procedure
13. Utilisation of Contractors
14. Sick Leave
15. Commitments
16. Wages
17. Renewal of Agreement
18. Signatories to Agreement

3.—INCIDENCE AND PARTIES BOUND

(1) This Agreement shall apply to and be binding upon Cargill Australia Limited (the Company), the organisations of employees set out below and all persons employed by the Company at Cargill Salt—Port Hedland, who are members or who are eligible to be members of the following Unions—

The Australian Workers' Union, West Australian Branch,
Industrial Union of Workers (AWU);

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Branch (AMWU);

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch (CEPU).

(2) There are currently 68 persons employed by the Company and referred to in subclause (1) above covered by the terms and conditions of the Cargill Australia Limited—Salt Production and Processing Award 1988 No. 34 of 1988 who will be covered by this agreement.

4.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the commencement of the first pay period commencing on the 19th day of May, 1997 and shall remain in operation until the 16th day of May, 1999 subject to Clause 17.—Renewal of Agreement hereof.

5.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the Cargill Australia Limited—Salt Production and Processing Award 1988 No. 34 of 1988.

(2) Where there is any inconsistency between this Agreement and the Parent Award, this Agreement shall prevail to the extent of the inconsistency.

6.—SINGLE BARGAINING UNIT

(1) The Unions representing employees covered by this Enterprise Bargaining Agreement have formed a Single Bargaining Unit which has held negotiations and reached full agreement on the terms of this document.

(2) The Single Bargaining Unit shall be given all relevant information to enable effective monitoring of the implementation of this Agreement.

7.—BACKGROUND

(1) The parties to the Cargill Australia Limited—Salt Production and Processing Award 1988 No. 34 of 1988 see this Enterprise Bargaining Agreement as a continuation of the program of restructuring and consolidation of structural efficiency measures which have been implemented in accordance with the requirements of the State Wage Principles of 1987 and 1989.

(2) The parties recognise that this Agreement, along with amendments to the Parent Award and considerations which will come into place during the terms of this Agreement, will lead to the fruition of the structural efficiency principles introduced in 1989.

(3) Fundamental to consolidating results already gained and to further commit the parties to continuing structural efficiency reform, the following initiatives have been put in place.

(a) Skills Development—

(i) This has been expanded by the appointment of a Training Co-ordinator. Employees have been given the opportunity to attend TAFE run courses to improve their skills.

(ii) A program for operator training has commenced and will be available to all production employees.

(b) Health and Safety Awareness—

The safety incentive scheme has resulted in a significant reduction in lost time accidents. The OHS&W elected members have all attended appropriate courses and work effectively with all employees through the Site Safety Committee to improve safety awareness.

(c) Communications—

(i) Regular communication meetings between senior management, staff and Union personnel are taking place. The purpose of these meetings is to inform all employees of future sales expectations and projected requirements, production targets and productivity and quality performance, thus instilling confidence in the long term viability of this operation.

- (ii) An informative newsletter in which all employees can contribute is produced on a regular basis.
 - (d) Work Organisation—
The parties are committed to furthering the principle of “worker participation” throughout proper training, and reducing the distinction between staff and Award employee routines.
 - (e) Industrial Harmony—
 - (i) The on-site Unions formed a combined Union Council in 1986 and inter-Union demarcation disputes have been non-existent since then.
 - (ii) All the parties believe the maintenance stream is best served by the craft Unions (CEPU and AMWU) and production by the AWU.
 - (f) Delivery—
 - (i) Co-operation between the parties has resulted in an improvement in productivity and efficiency.
 - (ii) It is expected as a result of this Agreement, greater efficiencies will be achieved enabling the Company to maintain competitiveness.
 - (g) Productivity Incentive Scheme—
 - (i) The Productivity Incentive Scheme which was introduced in the 1992 Enterprise Bargaining Agreement will continue unaltered except where there is any inconsistency between this Agreement and the 1992 Agreement. This Agreement shall prevail to the extent of the inconsistency.
 - (ii) The bonus scheme will be altered to reflect the increase in productivity as a result of capital expenditure and equipment improvements.
 - (iii) For improvements in efficiency created by Capital expenditure, the employees shall be paid a weekly bonus for that area equivalent to the average achieved for the previous 3 months.
- 8.—MISSION STATEMENT
- (1) The objectives of the Cargill Salt Port Hedland operation are to operate safely at the maximum of its capabilities whilst reducing operating and capital costs.
- (2) To remain competitive it is necessary for all parties to recognise the need for improvement. It is imperative we become more efficient and productive and work together to remove all demarcations and restructure work practices.
- (3) The Company expects all employees to be self motivated and be personally responsible for their behaviour, work practices and ownership of work tasks.
- 9.—CONTINUOUS IMPROVEMENT PROCESS
- The parties are committed to the ongoing process of continuous improvement. During the term of this Agreement the parties agree to adhere to the following approaches regarding the following matters—
- (1) Safety—
 - (a) The approach to safety will be as a team, with all employees participating. The objective is to have no injuries or accidents, lost time or other. This will be achieved by a commitment to ensure, not only that they themselves follow safe practices, but also their fellow workmates work safely.
 - (b) Employees will be fully supportive of the Safety Committee and participate in safety awareness programmes where individuals will be required to present topics and personal experiences to fellow employees.
 - (2) Job Enrichment—
 - (a) Individuals will be expected to take ownership of their work by meeting agreed standards according to their ability, skills and knowledge.
 - (b) They will be involved in determining expectations in procedures, process, reporting and planning.
 - (b) The employee’s skills performance will be assessed periodically and may involve the use of independent evaluations and/or evaluation standards. Such evaluation will operate in conjunction with Award definitions and be the subject of discussion and agreement between the parties.
 - (c) Leading hands to have a greater pro-active role in organising and scheduling of employees in their normal duties.
 - (d) Storemen to take a more active role in running and organising store functions including introduction of new technology.
- (3) Production—
- (a) Team members will organise and control their own work within a team, thus providing competitive work practices which will evolve into an appropriate key performance indicator compared to contractor efforts and costs. In this Agreement, “team” is defined as a natural work group, or group of employees working together.
 - (b) Individuals will be self motivated, use their own initiative to carry out all available work that they have the ability to perform. This will include assisting with minor maintenance work on plant and equipment and other miscellaneous site work required such as concrete, woodwork repairs, painting and unlicensed plumbing through prior consultation with their Supervisors and team members.
 - (c) Continuation of Shiploading Operation
 - (i) AWU employees to initiate and arrange a program to ensure continuation of shiploading during smoko’s and meal breaks. In instances where the mooring crew may be shorthanded and it is impractical to draw an AWU employee from another area, any Award employee may be used in mooring and unmooring as required.
 - (ii) AWU members to assist tradespersons when no other duties i.e. shutdown situations, no shiploading, washplant and harvesting after the appropriate training.
 - (iii) All employees to change rollers and adjust conveyor skirting rubbers on plant and equipment as required (knock down skirting rubbers and all conveyor rollers that are easily changed) after the appropriate training.
 - (d)
 - (i) A specific employee will be designated for the purpose of collecting smokos and lunches.
 - (ii) Where practical, smokos are to be taken on the job—harvesting, shiploading, field maintenance and reclaiming.
- (4) Competitive Maintenance—
The parties to this Agreement consent to the introduction to Worlds Best Practices by identifying resources, practices and processes to be used in the Cargill Salt’s operations. This will occur through evaluation of our time, costs and records to enable a comparison to the best alternatives available, then implement the most effective and efficient option to carry out the work.
- (5) Quality Improvement Process—
- (a) During the term of this Agreement the parties are committed to the continuation of the Quality Improvement Process. All areas of the operations will be included in this process and

- will include safety, product quality, profitability, productivity, costs, delivery, lead time, use of energy, material waste, manning, use of contractors, customer service and work practices.
- (b) All employees will participate in the quality process providing input to a better and more profitable operation. Using the team approach to identify, measure, correct and record problems which cause inefficiencies or loss in any areas.
- (c) Establish teams to ensure improved reliability, productivity, support and backup to each other and removal of demarcations.
- (6) Costs—
- (a) Individuals will be expected to control their costs at the minimum levels necessary to give maximum production to maintain cost competitiveness.
- (b) The Company will provide any cost information in agreed formats for the individual to carry out their tasks.
- (7) Practices—
- (a) The importance of work practices in achieving best results for all parties cannot be stressed too highly and will require the removal of all existing arbitrary demarcations through the consultative process.
- (b) All employees will genuinely work as a team to change attitudes and behavioural competencies to replace these demarcations with the safest and most efficient operational practices.
- (c) All time cards are to be completed at the end of each shift.
- (d) A time card must be submitted for all normal working days including ADO's and for all work carried out on Saturday, Sunday and public holidays.
- (8) Procedures—
- (a) All employees will be required to be involved in the writing and detailing of job procedures. The experience, knowledge and ideas that will flow from this process will improve the job to enable the task to be completed more safely and effectively. It is not intended that by introducing procedures it becomes a bureaucratic system of management nor should it restrict or limit how things can be performed, but rather it will be a summary of the best practices known at this time for performing the tasks.
- (b) The procedures, once written, will be subject to continuous review to allow for the introduction of improvements and new technology.
- (9) Training—
- In allowing the employees freedom to obtain job enrichment and gain necessary skills that will provide continuous improvement, all individuals will be given the opportunity to train in areas needed to perform and complete tasks safely and efficiently.
- (10) Counselling—
- Employees who fail to work in accordance with the conditions specified in this Agreement can be the subject of counselling where they are affecting the work performance of fellow employees. Counselling will follow the Cargill Salt Performance Counselling Procedure.
- (11) Planning—
- In taking responsibility for their own work both the individual or team will be expected to use all facilities available to them to obtain the advantages of planned maintenance or production programmes. This will not affect the priority of breakdown requirements.

- (12) EBA Improvement Flowchart (Appendix 1)—
- All changes will be as per the EBA Improvement Flowchart. If changes cannot be agreed upon then Clause 12.—Industrial Relations Procedure will be followed.

10.—OUTCOMES

The continuous improvement process is aimed at achieving outcomes which will be of real value to Cargill Salt and all of its employees in the following areas—

- (1) Cultural—
- (a) Safer working environment.
- (b) More integrated workforce (harmony).
- (c) Shared visions and beliefs.
- (2) Organisational—
- (a) Better utilisation of skills.
- (b) Increased Company profits.
- (c) Improved customer focus.
- (d) Better employee relations.
- (e) Understanding of how the business works.
- (f) Workforce willing to share ideas and information.
- (g) Potential for increasing future production.
- (3) Operational—
- (a) Innovations in work procedures and processes.
- (b) Increased productivity.
- (c) Better equipment utilisation.
- (d) Decrease lost time injuries, absenteeism and costs.
- (4) Personal—
- (a) Opportunity for bigger pay packet.
- (b) Greater job satisfaction.
- (c) Greater involvement in decisions that affect the employee.
- (d) Ownership of job.
- (e) Increased work autonomy.
- (f) More enjoyment of work.
- (g) Increased job security.
- (5) All employees are committed to the following principles in order to achieve the objectives outlined in this subclause—
- (a) A safe working environment and the provision of appropriate safety equipment to be the right of every employee.
- (b) Honesty, mutual respect and a businesslike attitude to prevail at all times.
- (c) The introduction of measures to improve productivity and efficiency are not designed to result in loss of status or income.
- (d) Working to improve wasteful work practices (identified and unidentified) in the areas of attendance to gain additional productive time from each shift.

11.—ANNUAL PERFORMANCE MEASURES

- (1) (a) Annual performance measures and targets will be set at the beginning of each financial year, these will be monitored and published monthly.
- (b) All targets will be realistic, achievable and require the co-operation of all parties.
- (2) Examples of Performance Measures—
- (a) Overall costs.
- (b) Ship tonnes processed.
- (c) Harvest ship tonnes/hour or ship tonnes/year etc.
- (d) Port haul ship tonnes/hour or ship tonnes/year etc.
- (e) Cost per ship tonne.
- (f) Equipment utilisation.
- (3) Examples of Change Indicators—
- (a) Safety statistics.
- (b) Absenteeism.

- (c) Survey focussing on cultural issues.
- (d) Vehicle/equipment damage.
- (e) Use of specific consumables.
- (f) Ideas generated/implemented.
- (g) Days lost through Industrial disputes.
- (h) Number of negative counsellings.
- (i) Outside services.
- (j) Housekeeping standards.

12.—INDUSTRIAL RELATIONS PROCEDURE

(1) The parties agree to fully support, implement and follow the Industrial Relations Procedures developed at Cargill Salt Port Hedland as listed in the Cargill Australia Limited—Salt Production and Processing Award 1988 No. 34 of 1988 and as prescribed in this Agreement.

(2) Any dispute in relation to the operation of this Agreement and/or the introduction of changes with respect to Clause 9.—Continuous Improvement Process and including those relating to contractors on site will be handled within the existing Industrial Relations Procedure.

(3) Any dispute which cannot be resolved may be referred by either party to the Western Australian Industrial Relations Commission. The parties may request that the Commission direct the Deputy Registrar (Karratha) to investigate the matter. A decision of the Commission shall be accepted by the parties as final, subject to any legal appeal procedures.

(4) Pending the resolution of any dispute in accordance with the above procedure work shall continue without disruption. All parties involved will ensure that the status quo remains in respect to established procedures and practices, provided that such continuation of normal work shall not prejudice the outcome of the dispute.

13.—UTILISATION OF CONTRACTORS

(1) Contractors will generally be employed for major construction, modification and project work. Normal routine work is best done by the employees of the Company having an intimate knowledge of the operation and its requirements. Contractors may, however, be necessary from time to time to perform some such work in order to meet surges in requirements which arise from peculiar or special circumstances.

(2) (a) The employer will not retain the services of any Contractor to perform the work which would otherwise be performed by employees covered by this Agreement. Prior to commencement the appropriate Unions will be notified of the work required to be performed and the nominated Contractor, except in special circumstances.

(b) No employee employed by the Company shall suffer any detrimental effect in respect of his/her normal earnings, job security or available reasonable hours of work by reason of the employment of Contractors employees in such circumstances.

(c) There will be no retrenchment of Company employees because of the employment of Contractors.

(d) The provisions of this subclause shall not act in any manner prejudicial to the employer's operation in the event of an emergency circumstance arising.

(3) Union representatives credentialed to the employer by the Unions party to this Agreement may not absent themselves from duty for purposes of attending matters on behalf of a Contractor's employee, but a Union representative shall not be prejudiced by so doing in off-duty hours with the approval of his/her Union and the approval of the Contractor to enter his/her premises.

14.—SICK LEAVE

Subject as hereinafter provided, an employee shall be entitled to payment for non-attendance on the grounds of personal ill-health or injury for not more than 10 days during each year of continuous service.

The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require, provided that the employee shall not be required to produce a certificate from a medical practitioner

with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

Upon termination, 25% of all accrued sick leave will be paid out.

The Award will be altered to reflect the intent of the change.

15.—COMMITMENTS

(1) The employees undertake that during the period of operation of this Agreement, there shall be no further wage increases sought, except for those provided under the terms of this Agreement or as determined by the Western Australian Industrial Relations Commission.

(2) All parties undertake that the terms of this Agreement will not be used to progress or obtain similar arrangement or benefits in any other enterprise.

(3) This Agreement is not designed to operate so as to cause an employee to suffer a reduction in ordinary time earnings, or depart from the current standards of the Western Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

(4) (a) During the period of this Agreement discussions will occur in the areas of—

- (i) Housing Policy;
- (ii) Method of wages payment, eg reduction in number of levels or consolidation of allowances, etc.;
- (iii) Redundancy Clause Amendment.;
- (iv) Public Holidays.

Australia Day will now be recognised as one of the 10 listed Public Holidays in lieu of the Queen's Birthday.

(b) It is acknowledged any agreement will require an Award variation.

16.—WAGES

(1) The following performance increases will be available on the basis that all employees covered by the Cargill Australia Limited—Salt Production and Processing Award 1988 No. 34 of 1988 continue to fully participate in and fully support this Enterprise Bargaining Agreement. The increases will be based on the continued lowering of operating costs due to changes implemented pursuant this Agreement.

- (a) A 4.0% wage increase is payable in addition to the 1995 EBA on rates and allowances resulting from the application to apply from the first pay period from the 19th day of May, 1997, followed by a further 4.0% wage and allowance increase commencing on the first pay period from the 18th day of May, 1998.
- (b) The weekly wage rates are as follows—

Level	07/10/96 \$	19/05/97 \$	18/05/98 \$	Base Trade %
Level 1	512.91	533.43	554.77	90.0
Level 2	526.58	547.64	569.55	92.5
Level 3	541.26	562.91	585.43	95.0
Level 4	555.49	577.71	600.82	97.5
Level 5	569.77	592.56	616.26	100.0
Level 6	598.23	622.16	647.05	105.0
Level 7	626.74	651.81	677.88	110.0
Level 8	655.25	681.46	708.72	115.0
Level 9	683.81	711.16	739.61	120.0
Level 10	712.27	740.76	770.39	125.0

- (c) It is agreed that a draft Level 7 will be introduced for AWU classifications with the job description to be negotiated during the terms of this Enterprise Agreement. (The additional tasks as described in subparagraph (3)(c)(ii) of Clause 9.—Continuous Improvement Process above, are to be taken into consideration as part of Level 7 structure).

- (d) It should be noted that notwithstanding the agreement by Cargill Salt to introduce these new levels, it is the Company's view that the nature of our business will severely limit the ability to sustain either of the higher classifications.

Further, as advised in prior negotiations, it is the position of Cargill Salt that not withstanding the

above and in line with Award modernisation strategies, it is our intention to pursue a reduction or consolidation of classifications and allowances during the term of this EBA.

- (e) The leading hand allowances are as follows—
 - If placed in charge of not less than 3 and not more than 10 other employees—
\$20.22 per week
 - If placed in charge of more than 10 and not more than 20 other employees—
\$31.03 per week

(f) Variation to Award Provisions—
In lieu of the corresponding provisions in the Cargill Australia Limited—Salt Production and Processing Award 1988 No. 34 of 1988 the following shall apply to employees hereof for the duration of this Agreement.

- (i) Subclause (5) of Clause 12.—Shift Work
An employee shall, in addition to his/her ordinary rate of pay, be paid \$18.18 per day for all time worked on afternoon shift.
- (ii) Paragraph (5)(b) of Clause 23.—Wages
A tool allowance of \$13.58 flat per week shall be paid to compensate tradespersons for wear, tear, loss and damage to their kit of tools. Should tools be lost or damaged through no fault of the tradesperson concerned, the circumstances shall be reviewed and if the claim is justified, tools shall be replaced at the employer's expense.
- (iii) Subclause (6) of Clause 23.—Wages
A tradesperson with one year's job experience with the Company shall be paid an allowance of \$8.31 flat per week, which shall be increased to \$15.45 flat per week after two year's job experience with the Company.
- (iv) Subclause (5) of Clause 24.—District and Site Allowances
A site allowance of \$30.42 flat per week be paid to all employees. This allowance shall be paid for any five days worked in a week and shall be paid pro-rata downwards if less than five days are worked.
Site allowance includes \$1.00 compensating for height money, dirt money, confined space, touch up epoxy painting, painting toxic and hazardous materials payment.
- (v) Subclause (1) of Clause 25.—Service Payments
An employee shall be paid the following service pay after continuous service of—

	Per Week
	\$
6 months	29.37
12 months	35.58
18 months	40.49
24 months	47.05
36 months	51.84
48 months	54.90
60 months	58.52
72 months	61.56
84 months	67.17

- (vi) Subclause (1) of Clause 26.—Special Rates and Provisions
An amount of \$1.00 per week has been included in the site allowance to compensate for height money, dirt money, confined space, touch up epoxy

painting, painting and toxic or hazardous materials payments.

- (vii) Paragraph (2)(a) of Clause 26.—Special Rates and Provisions
Sandblasting: An employee who is required to perform sandblasting shall be paid an allowance of 53 cents per hour.
- (viii) Paragraph (2)(b) of Clause 26.—Special Rates and Provisions
Epoxy Painting: An employee who is required to use epoxy paint, other than for touch up painting, shall be paid an allowance of 53 cents per hour.
- (ix) Paragraph (2)(c) of Clause 26.—Special Rates and Provisions
An employee engaged during working hours and/or overtime for more than a total of four hours on any day or shift performing sandblasting and/or epoxy painting shall be paid an allowance of 53 cents per hour for the whole day of the shift.
- (x) Subclause (3) of Clause 26.—Special Rates and Provisions
Percussion Implements: An employee required to use a percussion jackhammer of 41 kilograms or more will, in addition to any other entitlement, be paid 47 cents per hour for each hour so worked by him/her with that jackhammer.
- (xi) Paragraph (6)(a) of Clause 26.—Special Rates and Provisions
An employee who is a holder of a current St. John Ambulance First Aid Certificate shall be paid an allowance of the rate of \$6.63 per week.
- (xii) Paragraph (11)(a) of Clause 26.—Special Rates and Provisions
An electrician who holds a fitter or installers licence and is required to use that licence during the course of their employment shall be paid an allowance of \$15.68 per week.
- (xiii) Paragraph (11)(b) of Clause 26.—Special Rates and Provisions
An electrician who holds a fitter and installers licence and is required to use those licences during the course of their employment shall be paid an allowance of \$31.36 per week.
- (xiv) Paragraph (11)(c) of Clause 26.—Special Rates and Provisions
A refrigeration mechanic who holds the appropriate restricted electrical licence shall be paid an allowance of \$7.85 per week.

17.—RENEWAL OF AGREEMENT

- (1) The parties will review the contents of this Agreement three months prior to its expiry date.
- (2) This review is expected to result in the renegotiation, renewal or replacement of this Agreement. In the event that this does not occur, this Agreement will remain in force until it is replaced by another Enterprise Bargaining Agreement.

18.—SIGNATORIES TO AGREEMENT

Signed for and on behalf of Cargill Salt (A Department of Cargill Australia Ltd)
R. Cunning
 Witness: C. Ballard
 Date: 6th June, 1997

Signed for and on behalf of the
Australian Workers' Union—
West Australian Branch, Industrial
Union of Workers

D. Bartlem

Witness: M. Lourey

Date: 16th June, 1997

Signed for and on behalf of the
Automotive, Food, Metals, Engineering,
Printing & Kindred Industries Union
of Workers—Western Australian Branch

J. Sharp-Collett

Witness: A. Di-Giuseppe

Date: 3rd July, 1997

Signed for and on behalf of the
Communications, Electrical, Electronics,
Energy, Information, Postal, Plumbing &
Allied Services Union of Australia,
Engineering & Electrical Division—
Western Australian Branch

W. Game

Witness: R. E. Turner

Date: 1st July, 1997

**CHRIST CHURCH GRAMMAR SCHOOL INC
(ENTERPRISE BARGAINING) AGREEMENT.
No. AG 126 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of
Western Australia, Industrial Union of Workers

and

Christ Church Grammar School Inc.

No. AG 126 of 1997.

Christ Church Grammar School Inc (Enterprise Bargaining)
Agreement.

17 July 1997.

Reasons for Decision.

BY this application these parties seek to have registered an enterprise agreement to apply to teachers employed at Christ Church Grammar School ("the School"). The agreement would replace the first enterprise agreement between these parties registered in 1994.

It is clear from the submissions that a co-operative approach has applied in the process of developing the concept or mutual ends negotiating which underpins the enterprise based bargaining promoted under the Commission's wage fixing principles. The ISSOA ("the Union") says that in this instance in particular this has involved an overall advisory role for it in relation to its members at the school in concert with a similar recourse to AISWA (Association of Independent Schools of Western Australia, (Inc)) with the body of innovation, change and development which encompassed by the new agreement being a consequence of school based initiatives.

Mr Madin (Principal of Christ Church Grammar School) reiterated the employer's philosophical commitment to enterprise bargaining as a means to further develop a holistic approach to the purposes of the School. According to Mr Madin the decision to take up the opportunity to use the enterprise bargaining frame has and continues to be beneficial in progressing the ends of pastoral care and co-curricula activities as well as forward planning. He paid particular attention in his submissions to the high expectations of its teachers by the School with respect to commitment of time and skills not only

in an academic sense but more broadly across sport and other activities.

Mr Madin emphasised that the School sought to incorporate all its employees in these ends and to recognise the role of each individual towards achieving these. Thus not only teachers but also gardeners, domestic staff and other staff were seen as contributing in an integral way with common conditions and benefits being developed in recognition of these. This enterprise agreement then, while specific to teachers, is really one part of the larger picture.

In this enterprise bargaining period a number of arrangements were arrived at to recognise the particular concerns and needs of part time employees, and teachers who because of changes in curricula demand or developments may not be able to be employed to the same degree or at all. Some of the other main changes developed in this round of enterprise bargaining involve deferred salary options, long service leave provisions, parental leave and redundancy as well as considerations of part time teachers' conditions and security.

The salary increases agreed upon by the parties during the term of the agreement are payable in three increments: 10%, 7% and 4%. Co-curricular responsibilities over and beyond the expected involvement are recognised by an additional allowance of 25% of the Promotion Allowance with a further increase scheduled for application later in the life of the agreement.

An elected standing consultative committee is in the process of being established at the School and other changes being developed under the auspices of the enterprise agreement include the provision of insurance cover (journey insurance, personal accident insurance and salary continuance insurance) for employees. The parties are also investigating for implementation a cost effective purchase scheme to enable teachers to obtain computer equipment to further enhance their professional development.

The submissions by the parties in support of this enterprise agreement demonstrate a firm grasp of just what can be achieved through such negotiations. And this is only the second such agreement to be registered. On the record to date it is likely the next will be just as progressive if not more. The parties, and all those who contributed and/or assisted the bargaining process at the School are to be commended.

The agreement will be registered with effect on and from the date of hearing.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of
Western Australia, Industrial Union of Workers

and

Christ Church Grammar School Inc.

No. AG 126 of 1997.

Christ Church Grammar School Inc (Enterprise Bargaining)
Agreement 1997.

5 August 1997.

Order.

HAVING heard Mr I Sands on behalf of the Applicant and Mr J Madin on behalf of the Respondent now therefore I the undersigned pursuant to the powers conferred under the Industrial Relations Act, 1979 and by consent, do hereby order —

THAT the following schedule shall be and is registered as an industrial agreement to be known as the Christ Church Grammar School Inc (Enterprise Bargaining) Agreement 1997.

(Sgd.) S.A. CAWLEY,

[L.S.]

Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the "Christ Church Grammar School Inc (Enterprise Bargaining) Agreement 1997" and replaces the Christ Church Grammar School Inc (Enterprise Bargaining) Agreement 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Relationship to Parent Award
7. Single Bargaining Unit
8. Objectives
9. Salary Rates
10. Agreed Efficiency Improvements
11. Parental Leave
12. Dispute Resolution Procedure
13. Other Matters
14. No Reduction
15. No Further Claims
16. No Precedent
17. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between Christ Church Grammar School Inc (the School) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered Organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This agreement shall apply to teachers who are employed within the scope of the Independent Schools' Teachers' Award 1976 (the Award) by the School.

(2) The number of teachers covered by this agreement is 107.

5.—DATE AND DURATION OF AGREEMENT

(1) This agreement shall come into effect on 4 July 1997 and shall apply until 31 December 1999.

(2) The parties agree to meet no later than six months before the end of 1999 to review the agreement.

6.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the award.

Where there is any inconsistency between this agreement and the award, this agreement will prevail to the extent of the inconsistency.

7.—SINGLE BARGAINING UNIT

The parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the School and reached full agreement with the School represented by this agreement.

8.—OBJECTIVES

The purposes of this agreement are to—

- (1) Consolidate and develop further, initiatives arising out of the award restructuring process.
- (2) Accept a mutual responsibility to maintain a working environment which will ensure that the School and its staff become genuine participants and contributors to the School's aims, objectives and philosophy.
- (3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The School and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the School and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during School time and partly during the teachers' time.

9.—SALARY RATES

(1) (a) The minimum annual rate of salary payable to teachers engaged in the classification prescribed in Clause 11.—Salaries of the Award shall be increased by 21.0% above the rate prescribed in the Christ Church Grammar School Inc. (Enterprise Bargaining) Agreement 1994.

The increases shall be payable in three increments as follows—

- (i) Payable from 1 April 1997—10%
- (ii) Payable from 1 January 1998—7%
- (iii) Payable from 1 January 1999—4%

Step	From 1 Apr 1997	From 1 Jan 1998	From 1 Jan 1999
1	\$27,363	\$29,104	\$30,099
2	\$29,024	\$30,870	\$31,926
3	\$30,686	\$32,638	\$33,754
4	\$32,605	\$34,680	\$35,866
5	\$34,395	\$36,584	\$37,834
6	\$35,928	\$38,215	\$39,521
7	\$37,464	\$39,848	\$41,210
8	\$39,381	\$41,887	\$43,319
9	\$41,490	\$44,130	\$45,639
10	\$43,216	\$45,966	\$47,537
11	\$44,751	\$47,599	\$49,226
12	\$46,670	\$49,640	\$51,337
13	\$48,587	\$51,679	\$53,446

(b) The Promotion Allowance for a Head of a Major Department or an equivalent responsibility is to be calculated as 20% of Step 13 of the salary base from 1 April 1997.

(c) An additional allowance of 25% of the Promotion Allowance is provided in recognition of the extra-co-curricula offerings and responsibilities of all members of the teaching staff, over and above the involvement normally expected of a teacher in a school of this kind.

The additional allowance will be increased to 30% of the Promotion Allowance from 1 January 1999.

(d) In the event of any safety net adjustment being applied to the award, such adjustment shall be absorbed into the salary rates prescribed by this agreement.

10.—AGREED EFFICIENCY IMPROVEMENTS

(1) Teachers' Work

The parties agree to co-operate in the preparation and adoption of a statement on the role of teachers at Christ Church Grammar School.

(2) Professional Responsibilities

(a) The parties recognise that there is a wide range of duties and responsibilities included in the profession of teaching.

(b) The parties recognise that the following principles apply in addressing the fair and reasonable participation of teachers—

- (i) Much of the life and culture of the School is derived from School activities involving teachers and students and conducted outside regular classroom contact.
- (ii) The significant contributions of teachers to the life and values of the School are recognised.
- (iii) There will continue to be consultation between School and staff in the allocation of teachers to all activities conducted by the School.
- (iv) There will continue to be consultation between School and staff in the planning of the range and balance of activities conducted by the School.
- (v) The competence, skill and qualifications of teachers, including part time teachers, will continue to be considered in the planning and allocating of activities conducted by the School.

(c) The parties agree to explore flexible ways of utilising the varied talents of staff to cater for the needs of pupils in the broad range of curricular and co-curricular offerings.

(3) Professional Development

Professional development activities shall be undertaken partly in School time and partly in a teacher's own time where feasible, in equal proportions.

There will continue to be consultation with teachers in the planning of professional development.

(4) Appraisal

A programme of regular and mutually beneficial appraisal will be extended to all members of the teaching staff. There will be a balance between formative and summative dimensions of appraisal in the programme.

Each teacher will be appraised at least once each three years. Where applicable, appraisal will coincide with other relevant appraisals, such as those conducted for teachers applying for Senior Teacher classification and those reviewing the work and leadership of teachers in positions of responsibility.

The appraisal programme will be developed by the Staff Professional Development Committee in consultation with the Headmaster.

(5) Flexible Timetabling

The parties are committed to the development of alternative models of timetabling which allow for greater flexibility in the use of time and in the organisation of student groupings.

(6) Part Time Teaching Contracts

- (a) Part time teachers shall have the expectation of continuity of service.
- (b) The School may vary the teaching load of part time teachers on an annual basis. The periods taught will be considered as a fraction of normal teaching load for the purpose of calculating salary.
- (c) The part time teacher shall be given at least six weeks' written notice of any variation, unless otherwise agreed by the School and the teacher.
- (d) In determining the teaching load of a part time employee, the School acknowledges that such teachers may wish to seek additional employment and agrees to negotiate hours of duty which, as far as practicable, suit the circumstances of the employee and the School.
- (e) As members of the staff team part time teachers will contribute pro-rata to the co-curricular and pastoral work of the teaching team. In planning the involvement of part time teachers in co-curricular and pastoral programmes the School will take into account the fact that part time teachers need to supplement their income by additional part time work.

(7) Payment for Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers, employed for five (5) days or less, may be engaged by the day or half day and paid a daily rate or a pro-rata rate on the basis of the period worked in relation to the number of periods in the particular School day.

(8) Long Service Leave

Notwithstanding the provisions of subclause (1) of Clause 10.—Long Service Leave of the Award, from 1 January 1995, a teacher who has completed eight (8) years' continuous service with the School shall be entitled to take ten (10) weeks' Long Service Leave on full pay, corresponding with a completed term.

(9) Special Family Leave

The School agrees to employees using up to three days of their sick leave entitlement each year without the production of a medical certificate to use in the event of illness of a child, partner or other dependant.

The effect of such leave on the educational programme of the School will be considered by teachers when they request Special Family Leave. The School will not refuse reasonable requests.

(10) Deferred Salary Scheme

Eligible members of the teaching staff may participate in the School's Deferred Salary Scheme.

(11) Redundancy

- (a) It is acknowledged that redundancy is a termination of services because the position the staff member occupied is no longer available.
- (b) In considering which employee is to be made redundant the School will—
 - (i) assess its needs;
 - (ii) look at the job being performed and not the individual;
 - (iii) look at any flexibility offered by the employees being considered;
 - (iv) check with staff as to future plan (for example, long service leave, early retirement options or leave without pay) which may impact on the need for a redundancy;
 - (v) terminate positions at the end of the School year whenever possible;
 - (vi) when there are a number of employees competing for a limited number of positions, decisions about which employees are to be retained will be made after a thorough review of the School's requirements in specific work areas and the qualifications of the employees.
- (c) The School will hold discussions with the employees and the employees' industrial union regarding the possible redundancies. The discussions will cover any reasons for the proposed redundancies of the employees concerned.

All employees of the School will be informed of the procedures which will be undertaken in order to reach a fair and equitable outcome for all concerned.

- (d) To assist the redundant employee the School will—
 - (i) offer part time or relief employment if this is possible;
 - (ii) check with other schools to see whether there is a suitable vacancy;
 - (iii) provide secretarial assistance with job applications;
 - (iv) permit paid leave to attend job interviews;
 - (v) provide the employee with a reference and a statement to the effect that he/she is redundant if alternate employment is found either for or by the employee;
 - (vi) provide the employee with a redundancy payment.
- (e) The following severance pay scale will apply—

Less than 1 year	4 weeks pay
After 1 year	6 weeks pay
After 2 years	8 weeks pay
After 3 years	10 weeks pay
After 4 years	An additional week for each year of service above 3 years up to a maximum of 20 years

(12) Insurance Cover

- (a) For the period of this agreement, the School will provide the following insurance cover for all employees covered by this agreement and subject to insurers' terms and conditions—
 - (i) Journey Insurance—Loss of income as a result of accident whilst travelling to or from work, limited to payment of normal salary for a period up to two years.
 - (ii) Personal Accident Insurance—Similar to that covering all students at the School but limited in extent to \$150,000 for claims resulting in paraplegia or quadriplegia.
 - (iii) Salary Continuance Insurance—Providing a benefit of 75% of normal salary for a period of up to two years following a deferment period of 90 days and subject to individual acceptance based on insurers' medical criteria.

(b) The School acknowledges its intent to renew this insurance upon renewal of the agreement subject to the cost being acceptable to the School.

(13) Purchase of Computer Equipment

The parties agree to investigate and implement cost effective schemes that enable teachers to purchase computer equipment that enhances their efficiency in carrying out their professional duties at the School.

11.—PARENTAL LEAVE

The School will grant parental leave to teachers in accordance with current minimum provisions as contained in the Western Australian Minimum Conditions of Employment Act (1993).

12.—DISPUTE RESOLUTION PROCEDURE

A dispute is defined as any question, dispute or difficulty arising out of this agreement—

The following procedure shall apply to the resolution of any dispute—

- (1) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.
- (2) If the parties are unable to resolve the dispute, the matter, at the request of either party, shall be referred to a meeting between the parties to the agreement together with any additional representative as may be agreed by the parties.
- (3) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

13.—OTHER MATTERS

(1) There shall be established a Consultative Committee with equitable representation of the School and teachers covered by this agreement. The Committee shall provide a forum in which to discuss matters that relate directly to the conditions of employment of teaching staff

(2) The Committee shall meet at least once each School term.

14.—NO REDUCTION

Nothing contained herein shall entitle the School to reduce the salary or conditions of an employee which prevailed prior to entering into this agreement, except where provided by this agreement.

15.—NO FURTHER CLAIMS

It is a condition of this agreement that the parties will not seek any further claims, with respect to salaries or conditions, unless they are consistent with the State Wage Case Principles.

16.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the School or not.

17.—SIGNATORIES

_____ (signed) _____ (Signature) P M HOLLINGSWORTH (Name of signatory in block letters) Christ Church Grammar School Inc.	_____ (signed) _____ (Signature) V.J. EVANS (Name of signatory in block letters)
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_____ (signed) _____ (Signature) T.I. HOWE (Name of signatory in block letters) Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

CONSTRUCTION WORKER LEVEL (STRUCTURES) CULLACARBARDEE ABORIGINAL CORPORATION TRAINEESHIP AGREEMENT 1997. No. AG 143 of 1997.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Cullacarbardee Aboriginal Corporation.

No. AG 143 of 1997.

Construction Worker Level (Structures) Cullacarbardee Aboriginal Corporation Traineeship Agreement 1997.

COMMISSIONER P. E. SCOTT.

21 August 1997.

Order:

HAVING heard Mr G Giffard on behalf of the Applicant and Mr S Shacklock on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Construction Worker Level (Structures) Cullacarbardee Aboriginal Corporation Traineeship Agreement 1997 in the terms of the following schedule be registered on the 30th day of July 1997, and shall operate on and from 21st day of July 1997

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Construction Worker Level (Structures) Cullacarbardee Aboriginal Corporation Traineeship Agreement 1997.

2.—ARRANGEMENT

This Agreement shall be arranged as follows—

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Objectives
6. Definitions
7. Duration
8. Single Enterprise
9. Relationship with Awards
10. Dispute Settlement Procedure
11. Training Conditions
12. Employment Conditions
13. Wages and Allowances
14. Clothing and Footwear
15. Special Arrangements

APPENDIX A—Signatories

APPENDIX B—Training Framework

3.—PARTIES BOUND

This Agreement shall be binding on—

- (a) The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (the Union).
- (b) The Cullacarbardee Aboriginal Corporation Inc. (the Company) who is the signatory to this Agreement.
- (c) All employees who are members or eligible to be members of the Union.

4.—APPLICATION

(a) Subject to subclause (b) this Agreement shall apply to persons—

- (i) who are undertaking a Traineeship (as defined); and
- (ii) who are employed by the Company; and
- (iii) whose employment is, or otherwise would be, covered by the Award.

(b) There will be approximately 7 employees covered by this Agreement.

(c) Notwithstanding the foregoing, this Agreement shall not apply to employees who were employed by the Company prior to the date of approval of a Traineeship scheme relevant to the Company, except where agreed between the Company and the Union.

(d) This Agreement does not apply to the Apprenticeship system.

(e) Trainees under this Agreement will not undertake duties that have application to work ordinarily defined as work of a tradesperson or accredited apprentice.

(f) At the conclusion of the Traineeship, this Agreement ceases to apply to the employment of the Trainee and the Award shall thereafter apply to the former trainee.

(g) The sole provider of accredited training will be Homeswest.

5.—OBJECTIVES

This Agreement is to assist in the establishment of a system of Traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of the Trainees. The Traineeship is neither designed nor intended for those who are already trained and job ready. Existing employees shall not be displaced from employment by Trainees.

The parties to the Agreement are committed to the creation of a healthy and safe working environment, to maximise efficiency and productivity, to work together in a spirit of co-operation and to reward employees fairly for their achievements.

6.—DEFINITIONS

“approved training” means training undertaken (both on and off the job) in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship scheme approved by the State Training Authority or NETTFORCE. The training will be accredited and lead to qualifications as set out in subclause 8.—Training Conditions (at (f)).

“the Award” means the *Building Trades (Construction) Award 1987, No. 14 of 1978*.

“Trainee” means an employee who is bound by the Traineeship Agreement made in accordance with this Agreement.

“Traineeship” means the Structures Traineeship which has been approved by the State Training Authority, or which has been approved on an interim basis by NETTFORCE, until final approval is granted by the State Training Authority. The core competencies to be attained by the Trainee are detailed in the attached Appendix B to this Agreement.

“Traineeship Agreement” means an agreement made subject to the terms of this Agreement between the Company and the Trainee for a Traineeship and which is registered with the State Training Authority, NETTFORCE, or under the provisions of the appropriate State legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

“Traineeship Scheme” means an approved Traineeship applicable to a group or class of employees identified in Clause 5.—Objectives or to the building construction industry or a sector of the industry or an enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the Union upon the terms of the proposed Traineeship Scheme and Traineeship have occurred. An application for approval of a Traineeship Scheme shall identify the Union and demonstrate to the satisfaction of the approving authority that the above-mentioned consultation and negotiation have occurred. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement.

“Parties to the Traineeship Scheme” means the Union and the Company who have been involved in the consultation and negotiation required for the approval of the Traineeship Scheme.

“NETTFORCE” means the National Employment and Training Task Force.

“State Training Authority” means the Western Australian State Training Board.

Reference in this Agreement to **“the State Training Authority or NETTFORCE”** shall be taken to be a reference to NETTFORCE in respect of a Traineeship that is the subject of an interim approval but not a final approval by the State Training Authority.

“National Training Wage Interim Award” means the Award made in the Australian Industrial Relations Commission [Print No. L5189 of 1994].

“appropriate State legislation” means the State Employment and Skills Development Authority Act 1990 or any successor legislation.

7.—DURATION

This Agreement will expire after 12 months from the date of registration unless otherwise agreed in writing between the parties prior to the expiration of the Agreement.

8.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the Western Australian Industrial Relations Act 1979, as amended (the “Act”).

9.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in the Agreement and the Award the Agreement shall apply.

10.—DISPUTE SETTLEMENT PROCEDURE

The settlement of questions, disputes or difficulties arising out of the operation of this Agreement shall be the procedure outlined in the same terms of Clause 46—Settlement of Disputes of the Award.

11.—TRAINING CONDITIONS

(a) The Trainee shall attend an approved Training course or training program prescribed in the Traineeship Agreement or as notified to the Trainee by the State Training Authority in accredited and relevant Traineeship Schemes; or NETTFORCE, if the Traineeship Scheme remains subject to interim approval.

(b) Each Trainee will spend 400 hours (nominal) engaged in approved training. This will include the appropriate combination of on-the-job and off-the-job training.

(c) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the Company and the Trainee and lodged for registration with the State Training Authority or NETTFORCE, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the State Training Authority or NETTFORCE. The Company shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.

(d) The Company shall provide a level of supervision in accordance with the Traineeship Agreement during the Traineeship period.

(e) The Company agrees that the overall training program will be monitored by officers of the State Training Authority or NETTFORCE and the Union and training records or work books may be utilised as part of this monitoring process.

(f) Training shall be directed at the achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (eg. literacy, numeracy, problem solving, team work, using technology), and as are proposed to be included in the Australian Vocational Certificate Level 1 qualification. In addition, successful Trainees will be issued with certificates of attainment in the modules of the Structures Traineeship upon the Trainees reaching that level of competency.

(g) The Union shall be afforded reasonable access to Trainees during normal work hours for the purpose of explaining

the role and functions of the Union and enrolment of Trainees as members.

12.—EMPLOYMENT CONDITIONS

(a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration provided that a Trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the Company. By agreement in writing, and with the consent of the State Training Authority or NETTFORCE and the Union, the Company and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.

(b) The Company shall not terminate the employment of a Trainee, except in cases of wilful misconduct, without firstly having provided proper written notice of termination to the Trainee concerned in accordance with the Traineeship Agreement and subsequently to the State Training Authority or NETTFORCE and the Union. The written notice to be provided to the State Training Authority or NETTFORCE and the Union shall be provided at least 5 working days prior to the termination.

(c) If the Company chooses not to continue the employment of a Trainee upon the completion of the Traineeship they shall notify, in writing, the State Training Authority or NETTFORCE and the Union of their decision and their reasons for decision. Nothing shall prevent the Trainee or their Union from disputing this decision in a Court or tribunal.

(d) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.

(e) Where the employment of a Trainee by the Company is continued after the completion of the Traineeship period, such Traineeship period shall be counted as service for the purposes of the Award or any other legislative entitlements.

(f) (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shift work in order to ensure the training program is successfully completed.

(ii) No Trainee shall work overtime or shiftwork on their own.

(iii) No Trainee shall work shiftwork unless the parties to a Traineeship Scheme agree that such shift work makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non shift work Trainees.

(g) All other terms and conditions of the Award that are applicable to the Trainee or would be applicable to the Trainee but for this Agreement shall apply unless specifically varied by this Agreement.

(h) The right of entry provision contained in the Award shall apply to the parties bound by this Agreement.

(i) The parties agree that Trainees are "workers" for the purposes of the Workers' Compensation and Rehabilitation Act 1981.

13.—WAGES AND ALLOWANCES

(a) Rates of pay for Trainees shall be as follows.

	\$
Weekly Rate (Comprising Base Rate, Industry Allowance, Special Allowance and Fares Allowance)	410.60
Redundancy	Nil
Follow the job loading	Nil
Superannuation	As per Award
Annual Leave	As per Award
Site/Other Allowances	As per relevant Site Agreement

(i) Site/Other Allowances will be payable whilst Trainees are engaged in on-site work including on-the-job training.

(ii) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship which

includes approved training as defined in this Agreement.

(iii) The wage rates prescribed by this clause do not apply to complete trade level training which is covered by the Apprenticeship system.

14.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each Trainee by the Company within 5 days of commencement.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each Trainee (to be issued on or before 1 April).

2. The Company will also make available to each Trainee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

15.—SPECIAL ARRANGEMENTS

(a) The wage rates contained in this Agreement are minimum rates and shall apply in accordance with the application of the National Training Wage Interim Award, where the accredited training and worked performed are for the purpose of generating skills which have been defined for work at skill level B of the National Training Wage Interim Award.

(b) The provisions of this Agreement shall not be reduced.

(c) The provisions of this Agreement shall not cause a reduction of entitlements to any employee.

APPENDIX A—SIGNATORIES

SIGNATORIES

For and on behalf of the Company

.....(signed)..... 9/7/1997 COMMON SEAL
Chairperson

For and on behalf of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

SECRETARY (signed) 9/7/1997

COMMON SEAL

APPENDIX B—Training Framework

Course Outcomes

The course aims to provide—

- * an accredited entry level training program for people wishing to pursue a career in the Building and Construction industry.
- * an accredited training program that incorporates the following Key Competencies at Performance Level 1—collecting, analysing and organising information; communicating ideas and information, planning and organising, working with others; using mathematical ideas and techniques; solving problems; and using technology.
- * training and skill development in areas such as: communications, occupational health and safety, work organisation, plan reading and interpretation, the use of hand tools, plant and other equipment.

Outline of Course

The Traineeship program contains 16 compulsory modules. The module titled, Trainee Induction STR/FOF001, is a prerequisite for all other modules in the program. There are no other prerequisites and therefore there is no prescribed sequence for the delivery of the modules in the program.

Module Code	Module Title
STR/001	Trainee Induction
STR/002	Occupational Health and Safety
STR/003	Industry Calculations
STR/004	Plan Reading and Interpretation
STR/005	Workplace Communication
STR/006	Quality Concepts
STR/007	Work Organisation
STR/008	Construction Process
STR/009	Materials Handling and Storage
STR/010	Basic Concrete
STR/011	Plant and Equipment
STR/012	Hand Tools, Power Tools and Accessories

Module Code	Module Title	Schedule.
STR/013	Manual and Mechanical Excavation	1.—TITLE
STR/014	Demolition	This Agreement shall be known as the Construction Worker Level 2 (General Construction) Swan Valley Nyungah Community Traineeship Agreement 1997.
STR/015	Scaffolding	2.—ARRANGEMENT
STR/016	Oxy Acetylene Cutting	This Agreement shall be arranged as follows—
Duration:	400 Hours [nominal]	1. Title

On the Job training

The Traineeship incorporates on and off the job delivery. It is envisaged that the off the job component will comprise the equivalent of one day per week of instruction over a twelve month period. During the remaining four days of the week the Trainee is expected to be engaged in productive work with his/her employer. Whilst at work, the Trainee should be provided with opportunities to reinforce the skills and knowledge obtained in the off the job training period.

It is expected that during the period at work the Trainee will complete an approved skills assessment undertaken by a registered CTA Skills Assessor in each of the units of competency incorporated in the program. The records of these skills assessments will be forwarded to the Trainee, the training provider and the BCITC.

Entry Requirements

Trainees need to be able to read, comprehend and discuss printed information in English, write simple statements, recognise numbers and perform basic numeric calculations.

Recognition of Prior Learning

Trainees are entitled to have their prior learning recognised. The program incorporates a recognition of prior learning procedure that acknowledges the skills and knowledge that Trainees have obtained through—

- * formal training;
- * work experience; and
- * life experience.

Delivery Modes

The Traineeship is designed to be delivered to persons seeking employment in the building and construction industry.

CONSTRUCTION WORKERS LEVEL 2 (GENERAL CONSTRUCTION) SWAN VALLEY NYUNGAH COMMUNITY TRAINEESHIP AGREEMENT 1997. No. AG 144 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Swan Valley Nyungah Community.

No. AG 144 of 1997.

Construction Workers Level 2 (General Construction) Swan Valley Nyungah Community Traineeship Agreement 1997.

COMMISSIONER P. E. SCOTT.

21 August 1997.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Construction Workers Level 2 (General Construction) Swan Valley Nyungah Community Traineeship Agreement 1997 in the terms of the following schedule be registered on the 30th day of July 1997.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Construction Worker Level 2 (General Construction) Swan Valley Nyungah Community Traineeship Agreement 1997.

2.—ARRANGEMENT

This Agreement shall be arranged as follows—

1. Title
2. Arrangement
3. Parties Bound
4. Application
5. Relationship to the Community
6. Objectives
7. Definitions
8. Duration
9. Single Enterprise
10. Relationship with Awards
11. Dispute Settlement Procedure
12. Training Conditions
13. Employment Conditions
14. Wages and Allowances
15. Clothing and Footwear
16. Special Arrangements

APPENDIX A—Signatories

APPENDIX B—Training Framework

3.—PARTIES BOUND

This Agreement shall be binding on—

- (a) The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (the Union).
- (b) The Swan Valley Nyungah Community Aboriginal Corporation (the Community) who is the employer and signatory to this Agreement.
- (c) All employees who are members or eligible to be members of the Union.

4.—APPLICATION

(a) Subject to subclause (b) this Agreement shall apply to persons—

- (i) who are undertaking a Construction Worker Level 2 (General Construction) Traineeship (as defined); and
- (ii) who are employed by the Community.

(b) There will be approximately 7 employees covered by this Agreement.

(c) Notwithstanding the foregoing, this Agreement shall not apply to employees who were employed by the Company prior to the date of approval of a Traineeship scheme relevant to the Company, except where agreed between the Company and the Union.

(d) This Agreement does not apply to the Apprenticeship system.

(e) Trainees under this Agreement will not undertake duties that have application to work ordinarily defined as work of a tradesperson or accredited apprentice.

(f) At the conclusion of the Traineeship, this Agreement ceases to apply to the employment of the Trainee and the Award shall thereafter apply to the former trainee.

(g) The sole provider of accredited training will be the Community.

5.—RELATIONSHIP TO THE COMMUNITY

The Traineeship forms a critical part of the Community's Environment Health, Housing and Maintenance Programme. The Programme is an important response to the Community's call for changes to its environment health and living conditions that were first articulated in 1977.

The Community continues to live on its homegrounds (Bennett Brook Reservation) as protectors and keepers. However, its living conditions have been poor, with the loss of small babies, children and Community members who have lived at the homegrounds.

The Programme has involved land being directly vested in the Community by the State Government. The State Government has provided assistance in the areas of roads, sewerage and other infrastructure. ATSC grants have occurred under

the Federal Community Health Housing and Infrastructure Programme and architects and builders have been engaged under the control of the Community to build culturally appropriate living conditions in a way that is not damaging to our environment.

The building programme has been and will continue to be undertaken by Community members.

6.—OBJECTIVES

This Agreement will facilitate the training needs of Community members to enable them to emerge from the Traineeship at Construction Worker Level 2. This commitment to training objectives and outcomes will be pursued within the context of an awareness of the unique organisational structure of the Community and will not compromise the principles of collectivity and self-government that are so important to the Community.

This Agreement is to assist in the establishment of a system of Traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of the Trainees. The Traineeship is neither designed nor intended for those who are already trained and job ready. Existing employees shall not be displaced from employment by Trainees.

The parties to the Agreement are committed to the creation of a healthy and safe working environment, to maximise efficiency and productivity, to work together in a spirit of co-operation and to reward employees fairly for their achievements.

7.—DEFINITIONS

“approved training” means training undertaken (both on and off the job) in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship scheme approved by the State Training Authority or NETTFORCE. The training will be accredited and lead to qualifications as set out in subclause 12.—Training Conditions (at (f)).

“the Award” means the Building Trades (Construction) Award 1987, No. R 14 of 1978.

“Trainee” means an employee who is bound by the Traineeship Agreement made in accordance with this Agreement.

“Traineeship” means the General Construction Traineeship which has been approved by the State Training Authority, or which has been approved on an interim basis by NETTFORCE, until final approval is granted by the State Training Authority. The core competencies to be attained by the Trainee are detailed in the attached Appendix B to this Agreement.

“Traineeship Agreement” means an agreement made subject to the terms of this Agreement between the Company and the Trainee for a Traineeship and which is registered with the State Training Authority, NETTFORCE, or under the provisions of the appropriate State legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

“Traineeship Scheme” means an approved Traineeship applicable to a group or class of employees identified in Clause 5.—Objectives or to the building construction industry or a sector of the industry or an enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the Union upon the terms of the proposed Traineeship Scheme and Traineeship have occurred. An application for approval of a Traineeship Scheme shall identify the Union and demonstrate to the satisfaction of the approving authority that the above-mentioned consultation and negotiation have occurred. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement.

“Parties to the Traineeship Scheme” means the Union and the Community who have been involved in the consultation and negotiation required for the approval of the Traineeship Scheme.

“NETTFORCE” means the National Employment and Training Task Force.

“State Training Authority” means the Western Australian State Training Board.

Reference in this Agreement to **“the State Training Authority or NETTFORCE”** shall be taken to be a reference to NETTFORCE in respect of a Traineeship that is the subject of an interim approval but not a final approval by the State Training Authority.

“National Training Wage Interim Award” means the Award made in the Australian Industrial Relations Commission [Print No. L5189 of 1994].

“appropriate State legislation” means the State Employment and Skills Development Authority Act 1990 or any successor legislation.

8.—DURATION

This Agreement will expire after 12 months from the date of registration unless otherwise agreed in writing between the parties prior to the expiration of the Agreement.

9.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the Western Australian Industrial Relations Act 1979, as amended (the “Act”).

10.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in the Agreement and the Award the Agreement shall apply.

11.—DISPUTE SETTLEMENT PROCEDURE

The settlement of questions, disputes or difficulties arising out of the operation of this Agreement shall be the procedure outlined as follows.

- (a) Any relevant matter is brought to the attention of the Project Management Team and the matter is subsequently raised with the Community Spokesperson. The parties may resolve the matter at this stage.
- (b) If the matter is unresolved at this stage the Community Spokesperson may refer the matter to a Weekly Site Meeting. These meetings are attended by all employees, the Project Management Team, the Architect, the Community Spokesperson, the Community Chairperson and the Community Secretary’s. The Union may also attend these meetings. Matters referred might not be finally dealt with during meetings at which they are raised, as the participants generally prefer a few days to reflect on the issues. However, after due process the matter may be resolved by the Weekly Site Meeting.
- (c) If the matter is unresolved at this stage, or is deemed by the Community Spokesperson to be of sufficient importance when it is first raised with them, as outlined in (a), the matter may be referred by the Community Spokesperson to a Community Meeting called by that person. The matter will then be discussed and finally dealt with by the Community Meeting, according to its own processes for dealing with disputes, questions, difficulties or other matters.

12.—TRAINING CONDITIONS

(a) The Trainee shall attend an approved Training course or training program prescribed in the Traineeship Agreement or as notified to the Trainee by the State Training Authority in accredited and relevant Traineeship Schemes; or NETTFORCE, if the Traineeship Scheme remains subject to interim approval.

(b) Each Trainee will spend 240 hours (nominal) engaged in approved training. This will include the appropriate combination of on-the-job and off-the-job training.

(c) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the Community and the Trainee and lodged for registration with the State Training Authority or NETTFORCE, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the State Training Authority or NETTFORCE. The Community

shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.

(d) The Community shall provide a level of supervision in accordance with the Traineeship Agreement during the Traineeship period.

(e) The Community agrees that the overall training program will be monitored by officers of the State Training Authority or NETTFORCE and the Union and training records or work books may be utilised as part of this monitoring process.

(f) Training shall be directed at the achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (eg. literacy, numeracy, problem solving, team work, using technology).

(g) The Union shall be afforded reasonable access to Trainees during normal work hours for the purpose of explaining the role and functions of the Union and enrolment of Trainees as members.

13.—EMPLOYMENT CONDITIONS

(a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration provided that a Trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the Community. By agreement in writing, and with the consent of the State Training Authority or NETTFORCE and the Union, the Community and the Trainee may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.

(b) The Community shall not terminate the employment of a Trainee, except in cases of wilful misconduct, without firstly having provided proper written notice of termination to the Trainee concerned in accordance with the Traineeship Agreement and subsequently to the State Training Authority or NETTFORCE and the Union. The written notice to be provided to the State Training Authority or NETTFORCE and the Union shall be provided at least 5 working days prior to the termination.

(c) If the Community chooses not to continue the employment of a Trainee upon the completion of the Traineeship they shall notify, in writing, the State Training Authority or NETTFORCE and the Union of their decision and their reasons for decision. Nothing shall prevent the Trainee or their Union from disputing this decision in a Court or tribunal.

(d) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.

(e) Where the employment of a Trainee by the Community is continued after the completion of the Traineeship period, such Traineeship period shall be counted as service for the purposes of the Award or any other legislative entitlements.

(f) (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shift work in order to ensure the training program is successfully completed.

(ii) No Trainee shall work overtime or shiftwork on their own.

(iii) No Trainee shall work shiftwork unless the parties to a Traineeship Scheme agree that such shift work makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non shift work Trainees.

(g) All other terms and conditions of the Award that are applicable to the Trainee or would be applicable to the Trainee but for this Agreement shall apply unless specifically varied by this Agreement.

(h) The right of entry provision contained in the Award shall apply to the parties bound by this Agreement.

(i) The parties agree that Trainees are "workers" for the purposes of the Workers' Compensation and Rehabilitation Act 1981.

14.—WAGES AND ALLOWANCES

(a) Rates of pay for Trainees shall be as follows.

	\$
Base Rate	336.00
Industry Allowance	17.30
Special Allowance	7.70
Fares Allowance	as per Award
Redundancy	Nil
Follow the job loading	Nil
Superannuation	As per Award
Annual Leave	As per Award
Site/Other Allowances	As per relevant Site Agreement

(i) Site/Other Allowances will be payable whilst Trainees are engaged in on-site work including on-the-job training.

(ii) These wage rates will only apply to Trainees while they are undertaking an approved Traineeship which includes approved training as defined in this Agreement.

(iii) The wage rates prescribed by this clause do not apply to complete trade level training which is covered by the Apprenticeship system.

15.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each Trainee by the Community within 5 days of commencement.

(a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.

(b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each Trainee (to be issued on or before 1 April).

2. The Community will also make available to each Trainee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

16.—SPECIAL ARRANGEMENTS

(a) The wage rates contained in this Agreement are minimum rates and shall apply in accordance with the application of the National Training Wage Interim Award, where the accredited training and worked performed are for the purpose of generating skills which have been defined for work at skill level A of the National Training Wage Interim Award, provided further however that the wage rates are struck at the same rate as those rates struck for workers currently engaged in the Traineeship (Structures) that is to run concurrently with this Agreement.

(b) The provisions of this Agreement shall not be reduced.

(c) The provisions of this Agreement shall not cause a reduction of entitlements to any employee.

APPENDIX A—Signatories

SIGNATORIES

For and on behalf of the Community

.....(signed)..... Second/July/1997 COMMON SEAL

For and on behalf of the Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

SECRETARY (signed) 8/7/1997

COMMON SEAL

APPENDIX B—Training Framework

Course Outcomes

The course aims to provide—

* an accredited entry level training program for people wishing to pursue a career in the Building and Construction industry.

* an accredited training program that incorporates the following Key Competencies at Performance Level 2—collecting, analysing and organising information; communicating ideas and information, planning and organising, working with others; using mathematical ideas and techniques; solving problems; and using technology.

* training and skill development in areas such as: communications, occupational health and safety, work

organisation, plan reading and interpretation, the use of hand tools, plant and other equipment.

Outline of Course

The Traineeship program contains 4 compulsory modules and is designed to provide Trainees with basic industry knowledge and skills applicable to all four skill streams within the Building and Construction industry. The traineeship is completed through a combination of off the job training and on the job training.

Module Code	Module Title
GC 201	Concrete Site Operations
GC 202	Levelling
GC 203	Materials Handling and Transporting
GC 204	General Construction Operations
Duration:	240 Hours [nominal]

On the Job training

The Traineeship incorporates on and off the job delivery. It is envisaged that the off the job component will comprise the equivalent of one and one quarter days per week of instruction over a twelve month period. During the remaining three and three quarter days of the week the Trainee is expected to be engaged in productive work with his/her employer. Whilst at work, the Trainee should be provided with opportunities to reinforce the skills and knowledge obtained in the off the job training period.

It is expected that during the period at work the Trainee will complete an approved skills assessment undertaken by a registered CTA Skills Assessor in each of the units of competency incorporated in the program. The records of these skills assessments will be forwarded to the Trainee, the training provider and the BCITC.

Entry Requirements

Trainees need to be able to read, comprehend and discuss printed information in English, write simple statements, recognise numbers and perform basic numeric calculations.

Recognition of Prior Learning

Trainees are entitled to have their prior learning recognised. The program incorporates a recognition of prior learning procedure that acknowledges the skills and knowledge that Trainees have obtained through—

- * formal training;
- * work experience; and
- * life experience.

Delivery Modes

The Traineeship is designed to be delivered to persons seeking employment in the building and construction industry.

KIRIN AUSTRALIA ENTERPRISE AGREEMENT 1996.

No. AG 45 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Breweries and Bottleyards Employees' Industrial Union
of Workers of Western Australia

and

Kirin Australia Pty Ltd.

No. AG 45 of 1997.

Kirin Australia Enterprise Agreement 1996.

6 August 1997.

Order.

HAVING heard Mr R Murphy on behalf of The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia and Mr K Yamazumi and with him Mr D Greg on behalf of Kirin Australia Pty Ltd, now therefore I the

undersigned pursuant to the powers conferred under the Industrial Relations Act, 1979 and by consent, do hereby order—

THAT the agreement to be known as the "Kirin Australia Enterprise Agreement 1996" contained in the following schedule shall be and is registered as an industrial agreement.

(Sgd.) S. A. CAWLEY,

Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the "Kirin Australia Enterprise Agreement 1996".

2.—AREA AND SCOPE

This Agreement shall apply to Kirin Australia Pty Ltd in respect of its Malting Operations in the State of Western Australia and Employees who are eligible to be members of the organisation named in Schedule A—Parties Bound, of this Agreement.

3.—ARRANGEMENT

1. Title
 2. Area and Scope
 3. Arrangement
 4. Relationship to Parent Award
 5. Date and Period of Operation
 6. Definitions
 7. Consultation
 8. Contract of Service
 9. Casual Employees
 10. Overtime
 11. Rest Periods
 12. Lunch Intervals
 13. Annual Leave
 14. Sick Leave
 15. Long Service Leave
 16. Compassionate Leave
 17. Annual Bonus
 18. Training
 19. Record
 20. Hours
 21. Shift Work
 22. Holidays
 23. Protective Clothing
 24. Industry Service Allowance
- Schedule A—Parties to Agreement
Schedule B—Rates of Pay and Industry Service Allowance

4.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the "Malting Industry Award 1993 (No. A6 of 1993)". Where there is any inconsistency between the terms of this Agreement and such Award this Agreement shall prevail to the extent of the inconsistency.

5.—DATE AND PERIOD OF OPERATION

(1) This Agreement shall have effect from 1 July 1996 and shall remain in force until 30 June 1998, following which date it shall continue until amended or replaced by an alternative Agreement between the parties.

(2) The parties agree there will be no extra claims during the life of this agreement unless consistent with this Agreement and or any State Wage Decision.

(3) Any part of this Agreement may be varied by mutual consent.

(4) The parties will meet to review this Agreement at least ninety (90) days prior to its expiry.

6.—DEFINITIONS

(1) "Malt Production Operator" shall mean and be deemed to be a classification consisting of various levels of employee who handles malt or barley or work specifically associated with a malthouse.

(2) "Fitter" shall mean and be deemed to be a classification consisting of two levels of employee who hold the necessary qualifications and perform work as a fitter and turner within the Area and Scope covered by this Agreement.

(3) "Casual Employee" shall mean any employee who is employed for less than 35 hours within the spread of hours 6.00am to 6.00pm in any seven day period.

(4) For the purposes of leave and service, "month" shall mean calendar month and "week" shall mean seven consecutive calendar days.

(5) "Day" shall mean one ordinary working day, during which the hours of work by an employee may be six hours but not more than nine hours.

(6) "Union" shall mean The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia.

7.—CONSULTATION

(1) The parties are committed to improving effective consultation in the workplace. Both parties agree that consultation will provide Employees with an opportunity to participate in and understand the decisions that impact their lives and therefor support the principle of consultation.

(2) A Consultative Committee has been formed consisting of employee and management representatives. The Consultative Committee meets on a regular basis for the purpose of discussing and resolving matters of concern to the company and it's employees.

8.—CONTRACT OF SERVICE

(1) Subject to subclause (2) of this clause the contract of employment may be terminated.

(a) by either the employer or employee giving the following notice.

- (i) during the first month of continuous service—one day;
- (ii) after one (1) month's continuous service—one week; or

(b) by the payment or forfeiture of wages in lieu of notice as per paragraph (a) of this subclause.

(2) The services of an employee may be summarily terminated where the employee has been guilty of misconduct justifying dismissal.

9.—CASUAL EMPLOYEES

Casual employees shall be paid by the hour at the ordinary rate of pay plus 15 per cent.

10.—OVERTIME

(1) (a) All work performed outside the ordinary hours of duty Monday to Friday inclusive (including rostered shifts) shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(b) Work performed on a Saturday, Sunday or the employee's rostered day off, shall be paid for at the rate of double time with a minimum of four hours' pay. Such rate shall be in substitution for and not cumulative upon the shift work allowance prescribed in Clause 21.—Shift Work of this agreement.

(2) Employees if required to work more than two hours after the normal finishing time shall be entitled to a meal break of not more than 30 minutes' duration.

(3) (a) Employees working overtime shall whenever practicable be granted a break of ten consecutive hours between the completion of work and recommencement.

(b) All employees (except casual employees) shall be entitled to payment for any ordinary rostered time which falls whilst the ten hour break is being taken.

(c) Any employee who returns to work on the instructions of the employer, without being released from duty for ten consecutive hours, shall be paid double the ordinary rate of pay until being so released.

(d) The provisions of paragraphs (a) to (c) of this subclause shall not apply where overtime of less than three hours is worked as a result of a recall.

(e) Eight hours shall be substituted for ten in cases where shift workers change shift, either by agreement with each other or at the request of management in case of emergency.

11.—REST-PERIODS

Duration of rest periods for day workers shall be twenty minutes break at agreed times.

12.—LUNCH INTERVALS

(1) A lunch interval of 30 minutes' duration shall by agreement between the parties be taken between 11.00am and 2.00pm.

(2) Employees who are required to commence duties earlier than 7.00am shall commence their lunch interval not later than 12.00 noon.

13.—ANNUAL LEAVE

(1) The employer shall grant an employee who has completed 12 months' service, four weeks' annual leave. Two of the said four weeks shall be paid on double pay and two on ordinary pay.

- (a) Pro rata leave payment on the foregoing basis shall be granted to employees who have completed three months' or more service.
- (b) Pro rata leave payment on the basis of four weeks' annual leave at the ordinary rate of pay shall be granted to those employees who have completed one month but less than three months' service.
- (c) The said payments shall be made to an employee entitled thereto—
 - (i) on the termination of the employee's service if such termination occurs before taking leave;
 - or
 - (ii) taking of annual leave if the employee remains in the service of the employer.

(2) "Pay" for the purposes of this Clause shall mean the appropriate wage rate set out in Schedule B—Rates of Pay and Industry Allowance, together with any other payments the subject of agreement between the parties.

(3) In addition to existing payments, a shift premium will be paid when shift employees take annual leave. To qualify as a shift employee for this purpose, an employee must have worked for at least six months on shift work during the qualifying period for the leave. This qualifying period is not affected by the time the leave is actually taken. Where an employee has qualified as a shift employee, as defined above, the calculation of the shift premium shall be on the following basis—

- (a) Where on a 2-shift roster for the full qualifying period, or where the majority of time actually worked on shift work during this period is on a 2-shift roster, the premium will be 10%.
- (b) Where on a 3-shift roster for the full qualifying period, or where the majority of time actually worked on shift work is on a 3-shift roster, the premium will be 14%.

(4) The employer will consult with the employees and the Union to work out acceptable annual leave rostering.

14.—SICK LEAVE

(1) An employee who is unable through sickness or accident to attend for duty shall notify the employer not later than 9.30am for day/day shift workers, not later than 12.00 noon in the case of afternoon shift workers and not later than 7.00pm in the case of night shift workers. If requested, the employee must provide proof of sickness to the employer by way of a medical certificate.

(2) An employee shall be entitled to paid sick leave from the employee's accumulated entitlement in respect of any period of absence on account of sickness.

(3) An employee's annual entitlement to sick leave is 72 hours, accrued proportionately on completed months of service through the year.

(4) If the employee becomes sick for a period of four (4) or more days during annual leave or long service leave, those days will be credited back to the employee as annual leave to be taken at a time agreed between the employer and employee, but only if the employee provides proof of sickness, satisfactory to the employer.

(5) (a) On the death or termination of an employee with two (2) or more years' continuous service, the employee or the

employee's estate as the case may be is entitled to payment for accumulated sick leave as per paragraph (b) of this subclause.

(b) Accumulated sick leave is to be paid on the basis of a maximum of six (6) days accumulated sick leave per year of service, provided that any part of the first six (6) days taken as sick leave in any year of service shall be deducted.

(c) An employee may elect, in lieu of the entitlement in (a) and (b) hereof, to be paid out accrued sick leave on completion of each year of service, provided that following the pay out the remaining sick leave credit is not less than 160 hours.

15.—LONG SERVICE LEAVE

An employee's long service leave will be in accordance with the Western Australian Industrial Relations Commission General Order for long service leave, provided that the following shall apply—

(1) For each completed ten years' service, 468 hours leave.

(2) (a) An employee commencing on Long Service Leave shall receive payment at the relevant Rate of Pay and Industry Service Allowance shown in Schedule B—Rates of Pay and Industry Service Allowance of this Agreement, plus the following;

(b) Two weeks additional pay;

(c) An additional weeks pay for each of the following dependents—

(i) The employees spouse;

(ii) Each child under the age of 18 years.

(3) (a) Where at least seven (7) years' service has been completed and employment is terminated, pro rata payment shall be made in accordance with paragraph (a) of subclause (2) above for each completed year of service, except where an employee is made redundant when pro rata payment is made after five (5) completed years' service.

(b) The payments referred to in (2) (b) and (c) above will have no application unless the employee remains in service until the first long service leave is due.

(4) During the second and subsequent ten year periods of service, an employee may take pro rata long service leave after the seventh (7th) year, provided notice satisfactory to the employer is given.

(5) Any long service leave taken will be additional to any public holidays or annual leave specified in this award occurring during the period when the long service leave is taken.

(6) Long service leave may be taken in advance of the date of entitlement by agreement between the employer, the employee and the Union.

16.—COMPASSIONATE LEAVE

(1) An employee shall be entitled to leave of not more than three working days in any one year due to the death or unexpected critical illness of a member of the employee's immediate family (i.e., spouse, defacto spouse, parent, child, brother or sister) but only if and to the extent that the employee's absence was necessary; provided however—

(a) that this clause shall have no operation when the period of entitlement to leave under it coincides with any other period of entitlement to leave.

(2) "Year" for the purpose of this clause shall mean any calendar year from 1 January to 31 December.

17.—ANNUAL BONUS

(1) The employer shall pay to each employee in the month of December in each year or on the termination of employment on a pro rata basis on completed weeks of service—

(a) An annual bonus of two weeks' pay plus;

(b) An annual bonus based on assessment of individual performance ranging from a minimum \$200 to a maximum \$600.

18.—TRAINING

(1) Training will be provided and/or made available as per the Agreed Training and Development Manual and the Employees Training Program.

(2) Training Plans are created in accordance with the skills required to carry out the role associated with the employees duties.

(3) Each Employees Training Plan will be formulated to—

(a) Provide opportunities for employee development and growth.

(b) Enhance the skills associated within the employees attained level.

(c) Up-skill the employee to the minimum competency required.

(4) The employees duties are directly related to the level of competence he/she has attained.

(5) All employees may be required to perform any job function provided they have the required competence and it is safe for them to do so.

(6) Trade Union Training Leave

Employees nominated by the Union to attend during ordinary working hours, courses organised and / or conducted by the Union shall do so subject to the following conditions—

(a) That the Company receives written notice of the nomination from the Union setting out the times, dates, subject and venue of the course.

(b) That the granting of such leave shall be subject to the convenience of the Company and such leave not unduly affecting the Company's operations.

(c) That the Company and the Union shall agree on the source of payment of wages for the employee attending such a course prior to the course commencement.

(d) That the Company shall be provided with the proof of attendance of the representative at such course.

19.—RECORD

(1) A record shall be kept by the employer wherein shall be entered in respect of each employee—

(a) Name and age

(b) The nature of work performed

(c) Starting and finishing times each day

(d) Total number of hours worked including overtime

(e) Wages paid

(f) Annual leave, sick leave and long service leave paid and accrued.

(2) Such record shall be open to the inspection of a duly accredited representative of the Union during usual business hours.

20.—HOURS

(1) 72 hours plus or minus two hours and totaling 144 hours in four weeks shall constitute an ordinary fortnights' work for all employees.

(2) Such hours shall be worked on the basis of a nine day fortnight with days which may vary from six hours to nine hours, such nine days may be consecutive.

(3) Such hours shall be worked within the spread of 6.00am to 6.00pm.

(4) Each employee shall have a rostered starting and finishing time alterable on seven days notice; provided that such notice shall not be required in case of emergency.

(5) Rosters shall be posted prior to the Friday before the beginning of each fortnight and shall show the starting and finishing times for each employee in the designated period.

21.—SHIFT WORK

(1) On "regular shift work", that is in regular rotation from week to week on two or three shifts spread within 18 or 24 hours respectively Monday to Friday, day shift to be worked between 6.00am and 4.00pm; afternoon shift between 2.00pm and 12.00 midnight; and night shift between 10.00pm and 8.00am.

(2) On "casual shift work", that is on one only weekly shift worked, casual day, afternoon and night shifts to start and finish within the times respectively referred to in subclause (1) of this clause.

(3) The provisions contained in subclause (1) of this clause may be varied by mutual agreement between the employer and the Union.

(4) All employees employed on afternoon shift on a three-shift basis shall be paid an allowance equal to 15% of the ordinary rate of pay for each shift worked.

(5) All employees employed on regular night shift shall be paid an allowance equal to 17½% of the ordinary rate of pay for each shift worked.

(6) All employees employed on afternoon shift on a two-shift basis shall be paid an allowance equal to 10% of the ordinary rate of pay for each shift worked.

(7) All employees employed on day shift shall be paid an allowance equal to 10% of the ordinary rate of pay for each shift worked.

(8) All employees employed on casual night shift shall be paid an allowance equal to 17½% of the ordinary rate of pay for each shift worked.

(9) A meal break of 30 minutes shall be allowed to all shift employees. Meal break shall be agreed between the employer and the Union and shall be included in the working time.

(10) The additional allowances mentioned in subclauses (4) to (8) of this clause inclusive shall be taken into consideration in calculating overtime rates for any time worked beyond the rostered shift Monday to Friday inclusive. Work performed on a Saturday, Sunday or on the employee's rostered day off shall be paid for at the rate of double time exclusive of any shift penalty rate.

22.—HOLIDAYS

(1) The following days shall be observed as holidays without deduction of pay—

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, State Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2) Where work is performed on any of the above holidays, payment in addition to the day's pay shall be at double time with a four hour minimum.

(3) If a leisure day falls on a public holiday as defined in this award and no work is performed, the employee shall be paid for such public holiday at ordinary pay. In such a case the employer shall allow the employee another leisure day to be substituted for the leisure day which fell on the public holiday but no payment shall be made for that substituted day unless worked. Such substituted leisure day shall be observed during the ordinary fortnight during which the said public holiday was observed, or the subsequent or preceding fortnight.

23.—PROTECTIVE CLOTHING

(1) The employers agree to supply appropriate footwear to all employees to be whom during working hours, same to be supplied free of cost by the employer.

(2) After the completion of a satisfactory three (3) month probationary period an employee will receive an initial issue of five shirts and three trouser or shorts sets, two tee shirts or singlets, two pullovers, one jacket, one pair of overalls and two pairs of socks. All clothing apart from socks will be embroidered with the Kirin name. Thereafter issues will be replaced after reasonable wear and tear and only that clothing bearing the Kirin name apart from socks which will be replaced at two pairs per year. All clothing and footwear will be at a quality and cost as decided by Kirin management. Following registration of this agreement Kirin management will ensure that all current employees have their clothing brought up to a level consistent with the initial issue referred to above.

(3) All issued clothing provided by the employer shall be laundered by the employee, except for clothing provided under subclause (4) of this clause.

(4) Wet weather protective clothing will be provided to employees working in wet weather conditions. Such protective clothing is to remain the property of the employer.

(5) The employer and the Union will have discussions annually to ensure that the protective clothing provided in each department accommodates the requirements of the working environment in that department.

24.—INDUSTRY SERVICE ALLOWANCE

An Industry Service Allowance in accordance with Schedule B —Rates of Pay and Industry Service Allowance of this Agreement shall be paid to all employees in recognition of their relevant period of service.

SCHEDULE A—PARTIES TO AGREEMENT

Kirin Australia Pty Ltd Ken Yamazumi. (Signature.)	_____ (signed)
The Breweries and Bottleyards Employees' Industrial Union of Workers of Western Australia Ron Murphy. (Signature)	_____ (signed)
Bob Bunce (President)	_____ (signed)

SCHEDULE B—RATES OF PAY AND INDUSTRY SERVICE ALLOWANCE

(1) Rates of Pay

(a) The minimum weekly rate payable to employees covered by this Agreement shall be as follows—

	\$
(i) Malt Production Operator Level 1	472.30
(ii) Malt Production Operator Level 2	495.60
(iii) Malt Production Operator Level 3	520.50
(iv) Malt Production Operator Level 4	546.40
(v) Malt Production Operator Level 5	573.80
(vi) Malt Production Operator Level 6	602.50
(vii) Fitter Level 1	573.30
(viii) Fitter / Malt Production Operator Level 2	665.00

(b) The above rates shall be reviewed on and from 1 January 1997 and at the end of each six months thereafter and increased by a percentage equal to Perth Consumer Price Index Movements for the preceding six month period as publicised by the Australian Bureau of Statistics.

(c) Criteria for Levelling System—

M.P.O.	Level 1	New Employee, Starting Level.
M.P.O.	Level 2	Understand the process and method of operation. Ability to take action on breakdown/failure indicated by Production Supervisor.
M.P.O.	Level 3	Satisfactory knowledge of the Process and Operation System. Ability to trace fault or breakdown and report to Plant Supervisor Technical Manager or Engineering Manager.
M.P.O.	Level 4	Ability as for Level 3 plus able to perform some mechanical repairs and report.
M.P.O.	Level 5	Assistant to Production Supervisor. Initiates changes to Production Programs as necessary and reports to Production Supervisor and Technical Manager.

M.P.O.	Level 6	Ability to perform all tasks of Production Supervisor.
Fitter	Level 1	Qualified fitter with no experience in Malt Production Operation in Malt Production Plant.
Fitter/ M.P.O.	Level 2	Qualified fitter with experience of Malt Production Operation.

(2) Industry Service Allowance—
Each employee shall receive an allowance calculated on their relevant weekly rate as follows—

(a) After one years service	0.015
(b) After two years service	0.020
(c) After three years service	0.025
(d) And increased by 0.003 after every subsequent year.	

LOWER NORTH METROPOLITAN HEALTH SERVICE (BUILDING AND ENGINEERING TRADES) ENTERPRISE AGREEMENT 1997.
No. AG 135 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lower North Metropolitan Health Services

and

Construction, Mining, Energy, Timberyards, Sawmills And
Woodworkers Union of Australia—Western Australian
Branch & Others.

No. AG 135 of 1997.

28 July 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 135 OF 1997.

HAVING heard Ms M. Kaempf on behalf of the first named party and Mr C. Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Plumbing, Postal, and Allied Workers Union—Engineering and Electrical Division—Western Australian Branch; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the terms of the said agreement reveal the intention that the agreement be registered as an Industrial Agreement and by the affixation of their signatures thereupon all parties named have so signified their wish that the agreement be registered;

WHEREAS the Commission is satisfied that the aforementioned agreement complies with s.41A, s.49A and s.49B of the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement titled the Lower North Metropolitan Health Service (Building and Engineering Trades) Enterprise Agreement 1997, filed in the Commission on 24 June 1997 and as subsequently amended by the parties (including amendments effected by hand), and signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C. B. PARKS,
Commissioner.

[L.S.]

AGREEMENT

1.—TITLE

This Agreement shall be known as the LOWER NORTH METROPOLITAN HEALTH SERVICE (Building and Engineering Trades) ENTERPRISE AGREEMENT 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope and Parties Bound
4. Relationship with Parent Awards
5. Terms of the Agreement
6. Single Bargaining Unit
7. Aims and Objectives of this Agreement
8. Commitments
9. Dispute Settlement Procedures
10. Payment of Wages
11. Hours
12. Sick Leave/Family Leave
13. Consultative Committee
14. Agreement not to be used as a Precedent
15. No Extra Claims
16. Signatories to the Agreement

Schedule A

3.—SCOPE AND PARTIES BOUND

3.1 This Agreement shall be binding on the Management of the Lower North Metropolitan Health Service and all employees engaged in the Engineering Services Department of the Lower North Metropolitan Health Service.

3.2 This Agreement shall be binding on the following Unions—

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

The Communications, Electrical, Electronic, Energy, Information, Plumbing, Postal and Allied Workers Union—Engineering and Electrical Division—Western Australian Branch

The Automotive, Food, Metal, Engineering, Printing, and Kindred Industries Union of Workers—Western Australian Branch

4.—RELATIONSHIP TO PARENT AWARDS

4.1 This Agreement shall be read wholly in conjunction with the following Awards—

- a) Engineering Trades (Govt.) Award 1967, Award numbers 29, 30 and 31 of 1961 and 3 of 1962.
- b) Building Trades (Govt.) Award 1968, number 31A of 1966.

4.2 Where this Agreement is inconsistent with the provisions of these Awards the Agreement shall take precedent to the extent of any inconsistencies.

5.—TERMS OF AGREEMENT

5.1 This Agreement shall be effective from the date of registration by the Western Australian Industrial Relations Commission and remain in force for a period of 18 (eighteen) months.

5.2 The parties will review the terms of this Agreement no later than six months prior to its expiration.

5.3 The same terms and conditions as provided under this Agreement will continue to apply beyond the expiry date unless it is replaced by a new Agreement or is cancelled by either party giving thirty days notice of such cancellation.

6.—SINGLE BARGAINING UNIT

6.1 In accordance with the State Wage Decision of January 1992 (72 WAIG 191) the employees and the Lower North Metropolitan Health Service have formed a Single Bargaining Unit with respect to the employees within the Engineering Services Department engaged by the Lower North Metropolitan Health Service.

6.2 The Single Bargaining Unit will ensure that the framework of this enterprise Agreement is adhered to through regular meetings of the Consultative Committee.

6.3 The Single Bargaining Unit will assist in the implementation of measures that are designed to provide the efficiency, productivity and cost savings that have been agreed by the parties.

6.4 The outcome of the Consultative Committee will be binding on all parties to this Agreement.

6.5 This Agreement applies to six (6) full-time employees.

7.—AIMS AND OBJECTIVES OF THIS AGREEMENT

7.1 To provide a framework on which the Health Service and the Engineering employees can build an ongoing relationship which—

- a) Facilitates the continuous improvement to systems of work that benefit customers, employees and the Service.
- b) Encompasses the following functions, with a focus on competitiveness and best practices:
 - Planned preventative maintenance
 - Building/Repairs maintenance
 - Homecare manufacture and installation
 - Small to medium installation projects
 - Ancillary support in the areas of Fire Emergency and Occupation Safety and Health
- d) Promotes job satisfaction by enabling employees to gain and utilise a broader range of skills and access to relevant and applicable training programmes.
- e) Achieve improved communication and genuine consultation in the workplace.
- f) Promotes security through improving the overall competitiveness of the Department.

7.2 The parties have agreed to the following continuous quality improvement initiatives and productivity measurement monitoring programme—

1. The parties have agreed that the measurement and monitoring of productivity improvements is important because it provides feedback to the parties on performance.
2. The parties have agreed that the workshop employees will continue their whole of job approach to all tasks and to develop this to meet the performance indicators as set out in 7.4.

7.3 The “whole of job” in this Agreement is the process of being involved in all aspects of the tasks associated with an assignment from approval to completion.

7.4 The following performance indicators are agreed—

- (a) Corrective Maintenance —

Response Time

Classification	Daytime	Nighttime	Weekend
Priority 1	10 mins	1 hour	1 hour
Priority 2	4 hours	by 7am	by 7am
Priority 3	2 days	2 days	2-3 days

Definitions —

Priority 1 : The response to a problem which relates to the safety or health of patients, staff or visitors. e.g. power supply, theatre air conditioning, burst water pipes .

Priority 2: The response to all problems outside the Priority 1 classification excluding modifications and new works.

Priority 3 : Modifications and new works.

- (b) Planned Preventative Maintenance—

90% of requests completed by each staff member in the completion times as listed below—

- (c) Home Care —

Develop an ongoing consultative basis with the Head of Department Geriatric /Extended Care or his/her representative to ensure that these times are relevant to meet patient requirements.

Classification	Completion Time
Priority 1	2 days
Priority 2	4 days
Priority 3	7 days

Definitions —

Priority 1. Inpatients awaiting installation of the equipment prior to discharge

Priority 2. Clients living alone at home and who need equipment as soon as possible for safety and functional purposes.

Priority 3. Clients currently at home who would benefit from the issue and installation of the equipment but delay will not subject the client to any risk or undue strain.

7.5 The indicators referred to above will be reviewed on a 3 monthly basis by the Consultative Committee.

8.—COMMITMENTS

8.1 The Health Service recognises that employee contribution is essential to improved performance and therefore accepts those commitments by employees to work towards agreed targets as sincere and in the overall best interest of increasing the productivity and efficiency for the collective benefit of the customers of the Health Service and Health Service employees. To this end employees agree to alter the current practice in regard to morning and afternoon tea breaks. Further to this Agreement, employees will utilise a flexible approach in taking their breaks at a time and in a place which suites operational requirements. It is recognised that the afternoon tea break is available at the discretion of the employer and is not an award entitlement.

8.2 The parties are committed to the continued negotiation and development of a comprehensive Enterprise Bargaining Agreement addressing issues such as work practices, conditions of employment, the working environment and training strategies with the objective of further improving efficiency and effectiveness and increasing job satisfaction.

8.3 The Agreement shall not operate to cause an employee to suffer a reduction in ordinary time earnings.

8.4 The parties are committed to the consultative process to address any workplace changes that may arise during the term of the Agreement. The outcomes of the consultative process will be binding on both parties.

8.5 The parties are committed to the implementation of the agreed continuous improvement initiatives which have been accepted by the Consultative Committee and the parties agree to implement these improvement initiatives from the commencement of this Agreement. Additionally, the parties are committed to developing and implementing a productivity measurement monitoring programme.

8.6 The employees are committed to the continuation of their “whole-of job” approach including those associated with home care duties which have been adopted. It is further agreed to develop these practices to facilitate increases in productivity and efficiency. The Employer commits to provide the necessary training to ensure that the above is possible.

8.7 The “whole of job” in this Agreement is the process of being involved in all aspects of the tasks associated with an assignment from approval to completion.

8.8 The employer is committed to providing information and analysis of current working hour arrangements as to whether they are suited to operational requirements.

8.9 Employees bound by the awards described in Clause 3.2 shall be entitled to 13 weeks long service leave after a period of 10 years continuous service and after each further period of nine years continuous service.

8.10 An employee bound by this agreement at the discretion of management may be granted a payout for any fully accrued entitlement of long service leave.

9.—DISPUTE SETTLEMENT PROCEDURE

In order to minimise the effect of disputes that may arise between the parties or between the Hospital and its employees, it is agreed that the following procedure will be observed—

- (a) Where a dispute, grievance or other question arises, the employee concerned shall raise the matter with the appropriate Supervisor or other nominated representative. At the employee’s option, the Union representative may also be present.

- (b) If not satisfactorily settled, or in cases where the matter is of such a nature as to warrant the omission of the step detailed in subclause (a) hereof, the Union Representative and/or the employee(s) concerned shall discuss the matter with the appropriate Health Service representative.
- (c) If satisfaction is not achieved, the Union Representative or employee shall refer the matter to an appropriate full time official of the Union, who shall discuss the matter with the appropriate representative of the Health Service.
- (d) Throughout the foregoing procedure, normal work shall continue. No party shall be prejudiced to final settlement by the continuance of work in accordance with this subclause.
- (e) Each of the foregoing steps shall be followed in good faith and without any undue or unreasonable delay by any party. Five working days is agreed to be a reasonable time frame for each stage.
- (f) This procedure shall not apply in the event of any genuine issue involving the safety of the employee, or other person.
- (g) At any stage of this procedure, either party may refer the matter to the Western Australian Industrial Relations Commission for determination.

10.—PAYMENT OF WAGES

This Agreement provides for the following rates **as provided in Schedule A** in return for ongoing improvements to productivity and efficiency.

10.1 The payment of \$50.00 per week paid in the following instalments;

- an initial increase of \$35.00 per week as per Column A ; and
- a second increase after a further six months of \$15.00 per week as per Column B providing demonstrated productivity gains equivalent to the cost of this salary increase, and measured according to Clause 7 of this Agreement, is realised.

10.2 The consolidated wage will be paid on a fortnightly basis according to Schedule A; Columns A & B.

11.—HOURS

Any employee subject to this Agreement may elect to alter their arrangement of work hours to an eight (8) hour day over a nineteen (19) day month and in return be paid a once—off cash bonus of \$500.00. This bonus is available for the first six months of the Agreement.

12.—SICK LEAVE AND FAMILY LEAVE

12.1 Use of Sick Leave

- a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, up to five (5) sick days per year accrued from the previous year's entitlement for absences to provide care and support for such persons when they are ill.
- b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- c) The entitlement to use sick leave in accordance with this subclause is subject to —
 - i) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee, a de facto spouse, in relation to an employee, means a person of the opposite sex to the employee who lives with the employee as the husband or wife of that person on a bona fide domestic basis although not legally married to that employee; and
 - ii) a child or an adult child (including an adopted child, a step child or an ex nuptial child) parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

- d) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

12.2 Unpaid leave for family purpose

An employee may elect, with the consent for the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

12.3 Annual Leave

a) Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five days in any calendar year at a time or times agreed between them.

b) An employee and employer may agree to defer payment of the annual leave loading in respect of such leave, until at least, five consecutive annual leave days are taken.

12.4 Make up time

An employee may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Award.

12.5 Grievance Process

In the event of any dispute arising in connection with any part of this clause, such a dispute shall be processed in accordance with the dispute settling provision of this agreement.

13.—CONSULTATIVE COMMITTEE

13.1 To facilitate the progression of the Enterprise Agreement a Committee, to be known as the Consultative Committee, will be formed. The Committee will comprise of management and workforce representatives. Employee representatives will be elected by the employees covered by this Agreement.

13.2 Decisions of the Consultative Committee will be reached by consensus.

13.3 The parties agree that the outcomes of the Consultative Committee will be binding on both parties. The Consultative Committee will be established prior to the ratification of this Agreement in order to progress the objectives of this Agreement. The outcomes of the Consultative Committee prior to registration of this Agreement will also be binding on parties to this Agreement.

13.4 The Committee will ensure that any work practices agreed to will not be in breach of legislative requirements.

13.5 The Committee has the right to call on external resources to provide information and advice on matters under consideration, however, where invited parties attend meetings they will have no voting rights.

13.6 Meetings shall be held as required, but in any case no less frequently than each month.

13.7 Management and Workplace representatives have the right of access to all information and documents relevant to issues being considered by the Committee. Should information and/or documents requested or required by the Committee or its representatives be denied because they are "commercial-in-confidence", such a decision must be fully justified by management. All reasonable effort will be made by representatives to request documents and/or items of information within adequate time.

13.8 The Committee may review the training required under Clause 8.6.

14.—AGREEMENT NOT TO BE USED AS A PRECEDENT.

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as an example or precedent for any other Enterprise Agreement whether they involve the Lower North Metropolitan Health Service or not.

15.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not seek any further claims with respect to wages and working

conditions covered by this Agreement during the term of this Agreement

16.—SIGNATORIES TO THE AGREEMENT

(Signed by P. Campos)

Peter Campos
General Manager

Lower North Metropolitan Health Service
common seal affixed

(Signed by J. Mc Donald)

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (W.A. Branch).

common seal affixed

(Signed by K. Reynolds)

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

The Communication, Electrical, Electronic, Energy, Plumbing, Postal, Services Union of Workers—Engineering and Electrical Division—Western Australian Branch

common seal affixed

(Signed by W. Game)

The Automotive Food Metal Engineering Printing and Kindred Industries Union of Workers—Western Australian Branch

common seal affixed

(Sign by K. Peckham)

SCHEDULE A: RATES OF PAY

Trade Base Rate P/F 3	Level Award	Total Perm AI P/F	A/L Loading	Fortnightly Salary 21 August 1996 5	Column A To be Paid Per Fortnight on Date of Registration (+\$70) 4	Column B To be Paid Per Fortnight Six Months From Date of Registration (+\$30)
Carpenter \$977.20	Level 6 BTGA 1	\$69.42	\$14.04	\$1,060.66	\$1,130.70	\$1,160.70
Plumber \$1,020.00	Level 7 BTGA 1	\$94.06	\$14.95	\$1,129.01	\$1,199.00	\$1,229.00
Painter \$977.20	Level 6 BTGA 1	\$42.22	\$13.68	\$1,033.10	\$1,103.10	\$1,133.10
Fitter \$991.20	Level C8 ETGA 2	\$51.40	\$13.99	\$1,056.59	\$1,126.60	\$1,156.60
Electrician \$991.20	Level C8 ETGA 2	\$81.63	\$14.90	\$1,087.23	\$1,157.20	\$1,187.20

1 Building Trades (Government) Award.

2 Engineering Trades (Government) Award.

3 Inclusive of 1st and 2nd ASNA (\$32) per fortnight.

4 New employees' rates according to appropriate classification under relevant award.

5 Fortnightly Salary as per Western Australian Industrial Relations Commission ORDER (No. C180 of 1996) issued by Chief Commissioner W A Coleman on 21 August 1996 prescribing an annualised base rate salary, including an industry allowance, permanent trade related and other allowances and annual leave loading.

MINISTRY FOR CULTURE & THE ARTS—ART GALLERY OF WESTERN AUSTRALIA ENTERPRISE BARGAINING AGREEMENT 1996. No. PSA AG 5 of 1997.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ministry for Culture & the Arts

and

The Civil Service Association of Western Australia (Incorporated).

No. PSA AG 5 of 1997.

COMMISSIONER J. F. GREGOR.

22 August 1997.

Order:

REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. PSA AG 5 OF 1997

Having heard Ms L Houghton on behalf of the first named party and Ms J Gaines on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document titled Ministry for Culture & the Arts—Art Gallery of Western Australia Enterprise Bargaining Agreement 1996, filed in the Commission on 4 July 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J. F. GREGOR,

Commissioner.

[L.S.]

1.—TITLE

This Agreement shall be known as the Ministry for Culture & the Arts—Art Gallery of Western Australia Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

- 1 Title
- 2 Arrangement
- 3 Scope of the Agreement
- 4 Parties to the Agreement
- 5 Definitions
- 6 Date and Period of Operation of the Agreement
- 7 No Further Claims
- 8 Relationship to Parent Awards and Agreements
- 9 Single Bargaining Unit
- 10 Audit of 4% Second Tier and 1989 SEP
- 11 Objectives and Principles
- 12 Productivity Improvement
- 13 Productivity Measurement
- 14 Salary Increases
- 15 Dispute Settlement Procedure
- 16 Parental Leave
- 17 Family Carers Leave
- 18 Ceremonial/Cultural Leave
- 19 Emergency Service Leave
- 20 Blood Donor Leave
- 21 Return to Work During Periods of Approved Absences
- 22 Annual Leave Loading
- 23 Sick Leave Entitlement
- 24 Public Service Leave
- 25 Long Service Leave
- 26 Flexi-Time
- 27 Meal Allowance
- 28 Union Facilities, Access
- 29 Consultative Process
- 30 Employees Covered by This Agreement
31. Signatures of Parties to Agreement
Schedule A—Salaries

3.—SCOPE OF THE AGREEMENT

This Enterprise Bargaining Agreement shall apply to all Ministry for Culture and the Arts employees working within

the Service Division of the Art Gallery of Western Australia including Senior Executive Service employees working within the Art Gallery of Western Australia who are members of or eligible to be members of the Associations/Unions party to this Agreement, except those whose salary and conditions are determined pursuant to the Salaries and Allowances Act 1975.

4.—PARTIES TO THE AGREEMENT

(1) Employer

The Director General of the Ministry for Culture & the Arts

(2) Union

Civil Service Association of Western Australia Incorporated

5.—DEFINITIONS

“Agreement”: Ministry for Culture and the Arts—Art Gallery of Western Australia Enterprise Bargaining Agreement 1997.

“Business Unit”: a discrete group within the Gallery which provides defined services and products

for internal customers on a ‘user choice’ and/or ‘user pays’ basis, and for external customers, only on the basis of full costs based on accrual accounting.

“chief executive officer”: the officer delegated by the Director General to conduct the day to day business of the Gallery.

“Director General”: The Director General of the Ministry for Culture & the Arts.

“Gallery”: The Art Gallery of Western Australia Service Division of the Ministry for Culture & the Arts.

“Employee”: for the purpose of this Agreement, someone who is referred to at Clause 3—Scope.

“Employer”: The Director General of the Ministry for Culture & the Arts.

“Government”: the State Government of Western Australia

“Minister”: the Minister for Culture and the Arts.

“Union”: The Civil Service Association of Western Australia Incorporated.

“WAIRC”: the Western Australian Industrial Relations Commission

Annual or Short-Term Leave : Annual and short-term leave means any period of annual or other leave not exceeding 20 days.

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) Except as herein provided, this Agreement shall have effect from 1 July 1997 to 6 December 1997 inclusive.

(2) The parties will review this Agreement three months prior to the expiration of this Agreement to commence negotiations for a new Agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

(4) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rates for future Agreements or continue to apply in the absence of a further Agreement, except where the award rate is higher in which case the award shall apply.

(5) The Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC.

(6) This Agreement may be, with consent of the parties, varied, renewed or cancelled as appropriate.

(7) The parties agree that the benefits derived from the initiatives introduced during the term of this Agreement will form the basis of further discussions in accordance with subclause (2) of this clause, and improvements to the terms and conditions of future Agreements.

7.—NO FURTHER CLAIMS

(1) The parties to this Agreement undertake that for the duration of the Agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this Agreement.

(2) This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

This Agreement shall be read in conjunction with the Public Service Award 1992, which applies to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

9.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from the Gallery and the Union.

10.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from Award changes emanating from the “Restructuring and Efficiency Principle” of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

11.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are—

- (1) To achieve the Gallery’s mission and increase productivity and efficiency through continuous improvement.
- (2) To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.
- (3) To promote the development of trust and motivation and to continue to foster enhanced employee relations.
- (4) To facilitate greater flexibility in decision making and allocation of human and other resources.
- (5) To promote increased satisfaction from jobs and secure employment opportunities.
- (6) To develop and pursue changes on a co-operative continuing basis by using participative practices.
- (7) To promote health, safety, welfare and equal opportunity for all employees.

12.—PRODUCTIVITY IMPROVEMENT

(1) Objectives of Performance Improvement

Gallery Mission

The mission of the Gallery is to develop and present the best public art collection in the State and the pre-eminent collection of Western Australian art, and to increase the knowledge and appreciation of the art of the world for the enjoyment and cultural enrichment of the people of Western Australia.

Gallery Objectives

Collection

- develop and present the best public art collection in the State.
- acquire, preserve, display and promote the visual arts from the past and the present.
- emphasise the heritage of Western Australian art and Aboriginal art.

Exhibitions

- broaden the knowledge of Western Australians by providing opportunities to the public to view works which would otherwise not be available.
- provide a program of significant exhibitions and initiate and manage exhibitions of national and international stature.
- achieve national and international recognition for the Gallery’s exhibitions and public programs.
- inform the local arts community and the general public about contemporary developments elsewhere through the Gallery’s collection and exhibitions programs.

Access

- maximise community access to the visual arts.
- stimulate local visual arts practice and increase public interest in the visual arts through information, education and public programs.

Outreach

- provide opportunities for the people throughout the State to participate in art-related activities.

Resources

- achieve the means to deliver the Gallery's program through effective planning, management and development of internal resources.

(2) Strategies and Initiatives Developed to Achieve Objectives

The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery of the Gallery.

The parties agree to develop and implement productivity improvements by way of—

- Customer Service
- Establishment of Policy, Service, Business Units and Self Managed Work Teams;
- Quality Improvement/Continuous Improvement

The parties agree that increased productivity be achieved through the implementation of agreed quality management concepts, including team based approaches to improve productivity.

(3) The strategies and initiatives introduced over the life of the Agreement will impact significantly on the work practices, customer service and employee satisfaction.

(a) Introduction of Team Working—General Principles

(i) Benefits of Team Working

Teams provide significantly greater operational efficiencies through the breaking down of sectional and divisional boundaries.

Teams facilitate—

- increased morale of workforce through empowerment, spreading of responsibilities (involving people end to end on process and process outcomes);
- increased employee identification with the organisation as employees become more aware of, and involved in, organisational strategy issues and outcomes.

Teams allow for a reduction of the number of discrete steps, and number of separate person interfaces, in any process leading to lower error rates and minimisation of work .

Teams foster much improved vertical and lateral communication flows.

Teams promote a more democratic management style.

Teams provide for a stronger focus, enabling more effective delivery of planned outcomes via better utilisation of resources.

(ii) Team Working Philosophy

The following statements represent the beliefs which establish the parameters and principles for the Gallery's Enterprise Bargaining Agreement.

- Team based structures represent the most efficient and effective way of working within the Gallery. Teams focus attention on outputs and outcomes. The Gallery's team development will be encouraged.
- Flexibility in the way work is organised and undertaken is paramount to achieving high quality service delivery and outcomes. Work practices will be continually reviewed in the light of program outcomes in consultation with all participants.

- Job training and skills development, quality of work life and a culture of innovation and continuous improvement will be supported by the Gallery and continually addressed by staff. Emphasis will be given to work flexibility through multiskilling and multifunctionality, supported by appropriate training and professional development.

- Teams need to be able to plan within an overall program to provide a consistent basis for delivery of team outcomes and the whole of Gallery programs. Changing priorities and programs must be supported by both a reasonable level of team flexibility and a considered and timely approach by management to reordering of priorities.

(iii) Team Structure

In pursuit of the objectives outlined in this Agreement, the Gallery is committed to the development of a team based structure. The Gallery expects and will facilitate the involvement of all its employees in the development of work teams with a focus on quality client service and continuous improvement processes which contribute to the achievement of mandate and mission through program and organisational objectives.

For employees, this means becoming involved in the implementation of the Gallery's operational plan, developing open communication with team leaders and team members, and accepting personal responsibility for their own and their team's performance. Team leaders will have a particular accountability for achievement of team objectives, supported by team performance Agreements.

(iv) Team Characteristics

An effective team has the following characteristics—

- The team is committed to achieving the highest standard of service delivery to clients, be they internal or external clients.
- Outcome focused

Team members will treat each other with courtesy, consideration and respect, and will strive to practice the following work behaviours—

- act with honesty and integrity;
- maintain a flexible, achievement focussed outlook
- make consultative decisions;
- strive to be the best through continuous improvement;
- encourage innovation and creativity;
- accept shared accountability for achievement of objectives
- exhibit team pride;
- deal with official information responsibly and appropriately;
- take responsibility for skills and professional development and maintenance which contribute to operational needs.
- Take responsibility for effective communication

Communication is open within the team and across teams. Information is shared and decisions can be challenged and explained in a non-threatening environment.

Team Leaders and Divisional Managers will explain decisions to relevant employees.

(v) Production of Work Team Plans

Each team shall be organised to achieve clear objectives and outcomes which contribute to the achievement of program objectives and Gallery's client service goals. Each team will have a team leader initially nominated by the Divisional Manager

Work teams shall prepare written plans, the major elements of which shall be the work teams' agreed service outputs. Work team plans shall also document—

- major objectives and desired outcomes for projects.
- the performance indicators to be used in measuring work team outputs and achievements—
- the responsibility and accountability required to manage the team resources to monitor and deliver client services;
- identified changes to work practices;
- skill development required by team members and;
- methods for ensuring effective communication both within the work team and with other work teams, and with internal and external clients.

Work team plans will be formally reviewed and outcomes reported to the relevant Divisional Manager as and when required to ensure consistent standards and performance evaluation and outcomes.

Full implementation of this initiative for most mainstream Gallery functions should realise efficiencies to the value of two (2) FTEs, a reduced cover for annual and long service leave, and a reduction in the use of casual labour. These savings will be utilised to service significant programs and projects of the Gallery. Reviews of the pilot program will take place on a quarterly basis.

(vi) Pilot Programs

- The parties commit to the development of 'limited life' museum services teams based on the principles outlined above. Teams to be constituted on an exhibitions project basis with long and short term memberships to be drawn from different functional areas as required. Teams will be given training in team management principles and will have limited autonomy and be responsible for the delivery of agreed outcomes.
- The parties commit to team based exhibition program management to enable streamlining of programming and involving the reallocation of curatorial program management functions to the exhibitions area, thus freeing some curatorial section resources to further undertake collection management functions.

Reviews of the pilot programs will take place on a quarterly basis.

(b) Marketing Section

The parties commit to the reorganisation of the Marketing Section to combine two current non-overlapping positions (1.6 FTEs) to create two new Marketing Assistant positions (2.0 FTEs), with a shared operational focus for both data base management and volunteer information officers. This arrangement (which will be offset by a diminution in FTE allocation for the Marketing Manager position) will allow for project oriented tasks where each Marketing Assistant will follow designated projects from end to end, increasing lead times for planning and research purposes.

A re-focusing of this area to revenue generation and facilities hire should realise additional income of \$20,000 in year one. These savings will be utilised to service significant programs and projects of the Gallery.

(c) Education Section

The parties commit to maintaining the Education and Access public programs at current levels while also maintaining a 20% reduction in a Level 4 Education Officer position.

(d) Introduction of Multifunctionality

(i) The parties commit to broadening JDFs in competency based terms to allow for significantly greater mobility of staff within the Gallery.

(ii) Pilot Program

The parties agree to re-writing JDFs for GOSAC level 2 to 3 staff positions in the Conservation and Registration Sections to provide for a broader level of responsibility, including conservation support, storage crate fitout, mountcutting, fitting standard frames, movement/storage and location recording or works of art, inventories, stock surveys, collection documentation, as well as the delivery of artwork to the installation staff in areas where practical; duties will include boxing, preventative maintenance, physical movement of works, and para professional conservation and registration duties.

Reviews of the pilot program will take place on a quarterly basis.

(e) Artwork Condition Reporting

The parties commit to introducing a wider base of expertise for condition reporting allowing staff other than professional conservators to undertake basic condition reporting in line with contractual obligations and accountability to the Manager—Conservation. Implementation to include systematic training and support from Conservation Section staff and a system of referrals when additional expertise is required. This initiative will provide resources to more effectively plan and service the collection, exhibitions and public programs.

(f) Realignment of Curatorial Responsibilities

(i) The parties commit to a restructuring of curators and assistant curators positions to minimise medium based portfolio divisions and optimise the development and display of the collection as a unified whole. Curatorial responsibilities for the collection would be divided into the two main groupings Art and Craft and Design

Both groupings would encompass regional, national and international works. In the area of Art it will be further divided into two historical periods (Historical and Modern/Contemporary) with a Curator responsible for each.

The Aboriginal area will be included within the Contemporary area and a developmental process of increasing community consultation will be explored towards engaging a wide group of specialists on a project basis coordinated by the Curator of Modern and Contemporary Art. Routine collection related duties would be incorporated into the re-classified positions of Curator and/or Associate Curator, and/or Assistant Curator of Aboriginal Art.

This, combined with increased flexibility at the junior curatorial levels will enable the Gallery to support work by contracted art specialists. The Gallery in considering these contracts will endeavour to maximise professional development opportunities for

permanent staff. Through the development of a team based approach, public enquiries will be coordinated and implemented through the library and information service.

That the parties agree that the nature of curatorial work requires flexible hours of work to achieve the Gallery's operational needs. Curators and Assistant Curators will commit to a self-managed rostering system on a "time for time" basis including weekend and out of hours times governed by the following principles—

- The curators will work 75 hours per fortnight. The self-managed rostering system, which meets the business needs of the Gallery, may incorporate up to 10% out-of-hours work within the ordinary hours without advance approval of the Director—Curatorial Programs.
- Time-for-time for out of hours work, not in excess of two hours does not require prior authorisation.
- Time-for-time can be taken at any time, provided that the employee is available at the Gallery 5.5 hours per day.
- Time-for-time to be taken in blocks larger than two hours requires the approval in advance of the Director—Curatorial Programs.
- Time-for-time is non-accumulative and must be cleared within a calendar month from its date of accrual.
- When, as a result of operational needs, an employee has been denied access to time-for-time, then that employee will be paid out his/her entitlement on a time-for-time basis.

This initiative will provide opportunity to develop and enhance the State Collection through display, acquisitions, donations and increasing support from the Foundation of the Art Gallery of Western Australia.

(ii) Pilot Program

The parties commit to developing a roster for curatorial staff visits to Commercial Galleries on a 'time for time' basis including weekend and out of hours times. Staff to commit to a self-managed rostering system which will be subject to management approvals and which reflects both Gallery and staff requirements.

Reviews of the pilot program will take place on a quarterly basis.

(g) Rationalisation of Regional Galleries Out-of-Hours Work

The parties commit to implementing, on a time for time basis, a self managed roster which effectively services regional out of hours programs. Any management initiated changes to agreed rosters will result in payment of award penalty provisions. Any staff initiated changes will be subject to management approval and will continue to be paid for on a time for time basis. Further, the parties agree to the development of a policy procedure to develop this initiative. This initiative will provide more flexibility to achieve operational and curatorial requirements and also the opportunity to better service and interface with sponsors and the regional community in general.

(h) Telephone/Reception Service

The parties commit to reviewing the potential for improved telephonist/reception servicing through a feasibility study of alternatives to current delivery, with a view to obtaining staff savings, improving customer access and service for both internal and external customers. This review will be carried out either before or during the development of the next Enterprise Bargaining Agreement. Any demonstrated efficiencies arising from this initiative will be

captured for the purpose of the next Enterprise Bargaining Agreement.

(i) Administrative Support Group—Implementation of Team Working Principles

The parties commit to implementing new arrangements for general administrative services with a view to development of a semi autonomous team of level 1 to 3 officers under principles outlined in 3(a) above.

Outputs from this group will encompass senior manager support including secretarial services and general administrative support to other staff, as well as maintaining a more effective information management service as it is developed. Annual and short-term leave will be self-managed within the team, under overall supervisor oversight. The success of this initiative relies on senior manager's commitment to include self sufficiency during short-term contingencies.

During the life of the Agreement implementation should lead to a direct saving associated with the temporary relief budget and efficiencies to the value of 1.0 FTE, which will be underpinned by efficiencies resulting from senior staff and management implementing a self service discipline, particularly in relation to computer operations.

(j) Revised Basis for Compensation of Out of Hours Commitments

The parties commit to implementing, on a time for time basis, a self managed roster which effectively services Gallery out of hours programs. Any management initiated changes to agreed rosters will result in payment of award penalty provisions. Any staff initiated changes will be subject to management approval and will continue to be paid for on a time for time basis. Further, the parties agree to the development of a policy procedure to develop this initiative.

This initiative will enable public programs and public access to be increased for little or no extra cost.

(k) Valuation of Works of Art

The curatorial staff commit to achieving valuations for 20% of the collection annually for the life of this Agreement.

(l) Management of Job Trainee, Work Experience and Volunteer Program

The parties commit to the ongoing management of work experience and volunteer programs, enabling staff to more effectively focus on projects and outcomes.

(m) Centenary Galleries Planning and Liaison

The parties commit to service 25% more public display and access space, realising efficiencies to the equivalent of 1 FTE.

(4) Future Issues For Negotiations

During the life of this Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis of future Agreements.

13—PRODUCTIVITY MEASUREMENT

(1) The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of the Gallery to management, employees and other relevant stakeholders.

(2) The parties agree to assess organisational performance according to the extent to which the objectives of the Gallery are achieved. The parties agree that performance indicators have a primary role to assist in the attainment of corporate goals in the interests of clients, employees, the Gallery and the government on behalf of the community;

(3) A performance measurement system will be developed to measure the initiatives contained in Clause 12 above.

(4) The Gallery's levels of performance shall be measured against key performance indicators, to be developed in consultation with staff within three months of registration of this Agreement.

(5) It is agreed that the employees' understanding of productivity measurement concepts is vital to for performance monitoring arrangements to be successful on an ongoing basis.

(6) The performance measurement system will be used to calculate the value of productivity improvements in the Gallery listed in Clause 12 for salary increases outlined in clause 14—salary increases.

14.—SALARY INCREASES

(1) The following salary increases are payable on the basis of implementation and continued co-operation of those improvements in productivity and/or work practice changes outlined in Clause 12—Productivity Improvements.

(2) The following increases will be payable during the life of this Agreement—

- (a) an increase of 4% from pay period on or after 6 August 1996 and in accordance with Clause (1) hereof.
- (b) a further increase of 2% six (6) months from the payment at (2)(a) hereof and in accordance with Clause (1) hereof.
- (c) a further increase of 1.5% twelve (12) months from the payment at (2)(a) hereof and in accordance with Clause (1) hereof.

15.—DISPUTE SETTLEMENT PROCEDURE

This dispute settlement procedure will apply to any question, dispute or difficulty that arises under this Agreement.

(1) The Union representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a Union representative.

(2) If the matter is not resolved within 5 working days following the discussion in accordance with sub-clause (a) hereof the matter shall be referred by the Union representative or employee to the Gallery chief executive officer or his/her nominee for resolution.

(3) If the matter is not resolved within 5 working days of the Union representative's or employee's notification of the dispute to the Gallery chief executive officer, it may be referred by either party to the Western Australian Industrial Relations Commission.

16.—PARENTAL LEAVE

(1) Definition

(a) "Employee" includes full time, part time, permanent and fixed term contract employees

(b) "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave

(2) Eligibility for unpaid Parental Leave

(a) An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.

(b) Where the employee applying for the leave is the partner of a pregnant spouse one week leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(c) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks from the date of adoption.

(d) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examinations required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

(e) Subject to sub-clause (b) of this clause where both partners are employed by the Gallery the leave shall not be taken concurrently except under special circumstances and with the approval of the chief executive officer.

(3) Other Leave Entitlements

(a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.

(b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the chief executive officer's approval.

(c) An employee on parental leave is not entitled to paid sick leave and other paid award absences.

(d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(e) Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(f) Accrual of all leave entitlements shall be suspended during periods of Parental Leave.

(4) Notice and Variation

(a) The employee shall give not less than ten week's notice in writing to the Gallery of the date the employee proposes to commence maternity leave stating the period of leave to be taken.

(b) An employee proceeding on parental leave may, subject to chief executive officer approval, elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(5) Transfer to Safe Job

(a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave

(b) Where the employer is unable to provide a safe job with the organisation, or modify work to the extent required to provide safe employment, with the consent of the employee, and where practicable, the employee may be transferred to another agency until the commencement of parental leave.

(c) Where an external transfer is arranged, the work undertaken by the employee shall be at the same classification and within the employee's competence.

(d) If the transfer to a safe position is not practicable, the employee may take leave for such period as is certified necessary by a registered medical practitioner.

(6) Replacement Employee

Prior to engaging a replacement employee the Gallery shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

(7) Return to Work

(a) An employee shall confirm the intention to return to work by notice in writing to the Gallery not less than four weeks prior to the expiration of the period of parental leave;

(b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause (e) hereof the employee is entitled to return to the position occupied immediately prior to the transfer.

(c) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the Part-Time provisions of the relevant award and subject to chief executive officer's approval.

(d) Where the position occupied by the employee no longer exists or is unavailable the employee shall be entitled to a position of the same classification level within the officer's skills and competence.

(e) For the purposes of sub-clause (7)(d) of this clause, the employer shall act in accord with the Public Sector Management Act, regulations and standards and shall notify the employee and the Union of an impending decision to transfer another employee into a position where the substantive occupant is on a period of parental leave.

(8) Effect of Leave on Employment Contract

(a) Fixed Term Contract

An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(b) Continuous Service

Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for leave accrual purpose under the relevant award or this Agreement.

(c) Termination of Employment

An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant award.

17.—FAMILY CARERS LEAVE

(1) Employees covered by this Agreement may with management approval use a maximum of five (5) days Sick Leave entitlement in any calendar year in accordance with this clause to provide care for another person subject to—

- (a) the employee maintaining a minimum of ten (10) days accrued or pro rata Sick Leave for their own use during the calendar year;
- (b) The employee being responsible for the care of the person concerned; and
- (c) The person concerned being either—
 - (i) a member of the employee's immediate family; or
 - (ii) a person residing at the employee's residence for a period of no less than six months.
- (d) The term "*immediate family*" includes ;
 - (i) a spouse or a de facto spouse of the employee. A de facto spouse, in relation to a person, means a person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
 - (ii) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.
- (e) Production of satisfactory evidence of illness of the other person.

(2) The employee shall, wherever practicable give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence as soon as possible on the first day of absence.

(3) Leave taken under this provision is deemed to be Sick Leave.

An employee may elect, with the consent of the Gallery, to take unpaid leave for the purpose of providing care to a family member who is ill.

18.—CEREMONIAL/CULTURAL LEAVE

(1) Subject to organisational requirements, an employee covered by this Agreement is entitled to apply for leave for tribal/ceremonial/ cultural purposes.

(2) Such leave shall include leave to meet the employee's customs, traditional law and to participate in ceremonial/ cultural activities.

(3) Each day or part thereof, taken in accordance with subclause (a) may be deducted from short leave, annual leave or flexi-leave entitlements.

(4) Time off without pay may be granted by Agreement between the employer and the employee for tribal/ceremonial/ cultural purposes.

(5) Ceremonial/cultural leave shall be available, but not limited to Aboriginals and Torres Strait Islanders.

19.—EMERGENCY SERVICE LEAVE

Emergency Service Leave of absence shall be granted by the employer to an officer who is an active volunteer member of either the Western Australian State Emergency Service, Western Australian Volunteer Bush Fire Brigade or St John Ambulance Brigade, in order to allow for attendances at emergencies as declared by the recognised authority.

(1) The employer shall be advised as soon as possible by the employee, the emergency service, or such other person as to the absence and, where possible, the expected duration of the absence.

(2) The employee must complete a leave of absence form immediately upon return to work.

(3) The application form must be accompanied by a certificate from the emergency organisation certifying that the officer was required for the specified period.

(4) An employee, who during the course of an emergency, volunteers their services to an emergency organisation, shall comply with subclauses 1, 2 and 3 of this clause.

20.—BLOOD DONORS LEAVE

(1) New and Regular Donors

(a) Employees shall be entitled to 2 hours per quarter year of paid leave for the purpose of donating blood to the Red Cross Blood Centre where—

- (i) prior arrangement with the Supervisor has been made, and
- (ii) at least two (2) days' notice has been provided.

(2) Plasma Donors

(a) Employees who are plasma donors shall be entitled to two (2) hours per month of paid leave for the purpose of donating blood product where—

- (i) prior arrangement with the Supervisor has been made, by giving at least two (2) days' notice, or
- (ii) the employee is called upon by the Blood Centre.

(b) The notification period shall be waived or reduced where the Supervisor is satisfied that operations would not be unduly affected by the employee's absence.

(3) The employee shall be required to provide proof of attendance at the Blood Centre upon return to work.

(4) Other Donor Requirements

(a) The employer may grant an employee access to sick leave for the purpose of donating other tissue, such as bone marrow or a kidney. Each application for leave of this type shall be with compassion and in the strictest confidence.

(b) Access to leave under this subclause shall be in accordance with the normal provision of sick leave.

21.—RETURN TO WORK DURING PERIODS OF APPROVED ABSENCES

(1) Employees who are or have been absent from the workplace other than on secondment for a period in excess of three (3) months, whether on leave without pay or parental leave, may by mutual Agreement return to work in order to meet organisational needs.

(2) Subject to Agreement between the parties regarding return to work, the employee shall be paid at casual rates for the period of recall.

22.—ANNUAL LEAVE LOADING

(1) Subject to the provisions of Clause 19 of the Public Service Award 1992, the parties agree that Annual Leave Loading of 17.5% of normal salary will be payable once a year at a date to be agreed, but not later than the last pay before Christmas in the year in which it becomes due.

(2) Subject to the availability of funds, the employer may pay out any accrued Leave Loading accrued prior to December 1995.

23.—SICK LEAVE ENTITLEMENT

(1) The employer shall credit each permanent officer with the following Sick Leave credits on full pay, which shall be cumulative.

On the day of initial appointment	6 days
On completion of six months continuous service	6.5 days

On the completion of twelve months' continuous service 12.5 days
 On the completion of each further period of 12 months continuous service 12.5 days

(2) An officer employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent officer. An officer employed on a fixed term contract for a period less than 12 months, shall be credited with the same entitlement on a pro rata basis for the period of the contract.

(3) A part-time officer shall be entitled to the same Sick Leave credits, on a pro rata basis according to the number of hours worked each fortnight. Payment for Sick Leave shall only be made for those hours that would normally have been worked had the officer not been on Sick Leave.

(4) The provisions of this clause do not apply to casual officers.

An application for Sick Leave in excess of two consecutive days, or where the five days without a certificate has been utilised, shall be supported by a certificate of a registered Medical Practitioner, Dentist, Physiotherapist, Chiropractor or a statutory declaration.

24.—PUBLIC SERVICE LEAVE

The parties commit to the continuation of public service leave under the guidelines outlined in the Circular to Ministers No 1/94.

25.—LONG SERVICE LEAVE

An employee covered by this Agreement is entitled to apply for long service leave in periods of not less than one week, providing that a minimum of four consecutive weeks is preserved and taken during the clearance of this leave.

26.—FLEXI-TIME

The parties commit to the implementation of a feasibility study to examine the potential for full introduction of flexi-time provisions as per the Award, with a view to inclusion either before or during the development of the next Enterprise Bargaining Agreement. Any administrative efficiencies arising from the successful implementation of flexi-leave prior to the development of the next Agreement will be captured for the purpose of the next Enterprise Bargaining Agreement.

27.—MEAL ALLOWANCE

Where an officer has completed a period of approved overtime and has qualified for the payment of a meal allowance, such allowance shall be paid through the normal payroll processing procedures of the Gallery.

Any such payments shall be identified through appropriate payroll codes.

28.—UNION FACILITIES, ACCESS

The Gallery will provide access and access to facilities for union business as provided for by the Circular to Departments and Agencies No.13 of 1992, titled *Facilities Agreement For Union Workplace Representatives*, for the duration of the Agreement.

29.—CONSULTATIVE PROCESS

The parties are committed to working together to improve the business performance and working environment of the Gallery.

Consultation in the context of this Agreement is defined as information sharing and discussion on significant matters relevant to organisational change processes of the Gallery and conditions of service, and shall be conducted in such a way as to enable the parties to contribute to the decision-making process.

It is agreed that consultation with employees and the union party to this Agreement on proposed significant changes to work organisation shall occur prior to change being made or implemented.

Where the Gallery proposes to make any changes likely to affect existing work practices, working conditions or employment prospects of employees, the union and the staff affected shall be notified by the Gallery as early as possible.

It is acknowledged by the parties to this Agreement that decisions will continue to be made by the Gallery, which is responsible and accountable to government through statute for the efficient and effective operation of its business.

As part of this Agreement, the Gallery agrees to establish processes which will facilitate employee involvement.

The process will be at two levels—

- At the workplace level employees will be involved in contributing to improve the efficiency and effectiveness of their work teams within set policies and guidelines.
- At the strategic and corporate level, the parties agree to establish a peak consultative forum to monitor, review and have input into the progress of the implementation of this Enterprise Bargaining Agreement and to actively share information and consult on corporate issues affecting the Gallery's business operations.

The parties to the peak consultative forum will consist of, but not be limited to, senior management, a union official and an employee representative from the Union.

30.—EMPLOYEES COVERED BY THIS AGREEMENT

As at the date of registration the approximate number of employees bound by this Agreement is fifty-five (55).

31.—SIGNATURES OF PARTIES TO THIS AGREEMENT

Signatories

Signed on behalf of the
 MINISTRY FOR CULTURE & THE ARTS—
Signed.....

Dr W J Cox
 ACTING DIRECTOR GENERAL
 Date: 2/7/97

Signed for and on behalf of the
 THE CIVIL SERVICE ASSOCIATION OF
 WESTERN AUSTRALIA INCORPORATED
Signed.....

Dave Robinson
 Secretary
 Date: 20/6/97

SCHEDULE A—SALARIES

(Cumulative)

GOSAC Rates	4% from 11 August 1996			2% from 11 February 1997			1.5% from 11 August 1997			
	Annual	Fortnightly	Hourly	Annual	Fortnightly	Hourly	Annual	Fortnightly	Hourly	
Level 1										
Level 1/1	21165	22012	843.90	11.2519	22452	860.79	11.4772	22789	873.69	11.6492
Level 1/2	21817	22690	869.89	11.5986	23144	887.30	11.8307	23491	900.62	12.0083
Level 1/3	22468	23367	895.85	11.9446	23834	913.78	12.1837	24192	927.47	12.3663
Level 1/4	23115	24040	921.65	12.2886	24521	940.09	12.5346	24889	954.20	12.7227
Level 1/5	23766	24717	947.60	12.6347	25211	966.57	12.8876	25589	981.05	13.0807
Level 1/6	24417	25394	973.56	12.9808	25902	993.04	13.2406	26291	1007.94	13.4392
Level 1/7	25166	26173	1003.42	13.3790	26696	1023.51	13.6468	27096	1038.84	13.8512
Level 1/8	25684	26711	1024.08	13.6544	27245	1044.55	13.9273	27654	1060.20	14.1361
Level 1/9	26450	27508	1054.62	14.0616	28058	1075.71	14.3428	28479	1091.84	14.5579

SCHEDULE A—SALARIES—*continued*

(Cumulative)

GOSAC Rates	4% from 11 August 1996			2% from 11 February 1997			1.5% from 11 August 1997			
	Annual	Fortnightly	Hourly	Annual	Fortnightly	Hourly	Annual	Fortnightly	Hourly	
Level 2										
Level 2/1	27367	28462	1091.18	14.5491	29031	1113.02	14.8403	29466	1129.70	15.0627
Level 2/2	28070	29193	1119.21	14.9228	29777	1141.60	15.2214	30224	1158.73	15.4498
Level 2/3	28809	29961	1148.68	15.3157	30560	1171.64	15.6218	31018	1189.20	15.8561
Level 2/4	29590	30774	1179.82	15.7309	31389	1203.43	16.0457	31860	1221.46	16.2862
Level 2/5	30407	31623	1212.39	16.1653	32255	1236.63	16.4884	32739	1255.16	16.7355
Level 3										
Level 3/1	31530	32791	1257.17	16.7623	33447	1282.31	17.0974	33949	1301.55	17.3540
Level 3/2	32405	33701	1292.06	17.2275	34375	1317.89	17.5719	34891	1337.66	17.8355
Level 3/3	33307	34639	1328.02	17.7070	35332	1354.57	18.0610	35862	1374.90	18.3320
Level 3/4	34233	35602	1364.95	18.1993	36314	1392.23	18.5631	36859	1413.11	18.8415
Level 4										
Level 4/1	35503	36923	1415.58	18.8744	37661	1443.89	19.2519	38226	1465.53	19.5404
Level 4/2	36498	37958	1455.26	19.4034	38717	1484.36	19.7915	39298	1506.62	20.0883
Level 4/3	37522	39023	1496.08	19.9478	39803	1526.01	20.3468	40400	1548.88	20.6518
Level 2/4										
1st year	27367	28462	1091.18	14.5491	29031	1113.02	14.8403	29466	1129.70	15.0627
2nd year	28809	29961	1148.68	15.3157	30560	1171.64	15.6218	31018	1189.20	15.8561
3rd year	30407	31623	1212.39	16.1653	32255	1236.63	16.4884	32739	1255.16	16.7355
4th year	32405	33701	1292.06	17.2275	34375	1317.89	17.5719	34891	1337.66	17.8355
5th year	35503	36923	1415.58	18.8744	37661	1443.89	19.2519	38226	1465.53	19.5404
6th year	37522	39023	1496.08	19.9478	39803	1526.01	20.3468	40400	1548.88	20.6518
Level 5										
Level 5/1	39494	41074	1574.71	20.9962	41895	1606.22	21.4162	42523	1630.29	21.7372
Level 5/2	40827	42460	1627.86	21.7048	43309	1660.42	22.1389	43959	1685.32	22.4709
Level 5/3	42212	43900	1683.09	22.4411	44778	1716.73	22.8897	45450	1742.48	23.2331
Level 5/4	43649	45395	1740.38	23.2051	46303	1775.19	23.6692	46998	1801.82	24.0243
Level 6										
Level 6/1	45960	47798	1832.53	24.4337	48754	1869.16	24.9222	49485	1897.20	25.2960
Level 6/2	47531	49432	1895.17	25.2689	50421	1933.06	25.7741	51177	1962.07	26.1609
Level 6/3	49157	51123	1960.00	26.1333	52145	1999.19	26.6558	52927	2029.16	27.0554
Level 6/4	50893	52929	2029.22	27.0562	53988	2069.81	27.5975	54798	2100.87	28.0117
Level 7										
Level 7/1	53555	55697	2135.36	28.4714	56811	2178.06	29.0407	57663	2210.73	29.4764
Level 7/2	55397	57613	2208.80	29.4507	58765	2252.98	30.0397	59646	2286.77	30.4902
Level 7/3	57401	59697	2288.70	30.5161	60891	2334.48	31.1264	61804	2369.50	31.5933
Level 8										
Level 8/1	60658	63084	2418.57	32.2476	64346	2466.93	32.8924	65311	2503.94	33.3859
Level 8/2	62991	65511	2511.59	33.4879	66821	2561.84	34.1578	67823	2600.25	34.6701
Level 8/3	65884	68519	2626.94	35.0259	69889	2679.47	35.7262	70937	2719.64	36.2619
Level 9										
Level 9/1	69497	72277	2771.00	36.9466	73723	2862.42	37.6856	74829	2868.84	38.2512
Level 9/2	71938	74816	2868.33	38.2444	76312	2925.71	39.0095	77457	2969.59	39.5945
Level 9/3	74722	77711	2979.33	39.7244	79265	3038.92	40.5190	80454	3084.50	41.1266

**MINISTRY FOR CULTURE & THE ARTS—ARTS WA
DIVISION (ENTERPRISE BARGAINING)
AGREEMENT.**

No. PSA AG 6 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ministry for Culture & the Arts

and

The Civil Service Association of
Western Australia (Incorporated).

No. PSA AG 6 of 1997.

COMMISSIONER J. F. GREGOR.

22 August 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. PSA AG 6 OF 1997

Having heard Ms L Houghton on behalf of the first named party and Ms J Gaines of on behalf of the second named party,

and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document titled Ministry for Culture & the Arts—Arts WA Division (Enterprise Bargaining) Agreement, filed in the Commission on 4 July 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J. F. GREGOR,
Commissioner.

[L.S.]

MINISTRY FOR CULTURE & THE ARTS—ARTS WA
DIVISION (ENTERPRISE BARGAINING) AGREEMENT

No. PSA AG 6 OF 1997

1.—TITLE

This Enterprise Agreement shall be known as the Ministry for Culture & the Arts—ArtsWA Division (Enterprise Bargaining) Agreement.

2.—ARRANGEMENT

1. Title

2. Arrangement
3. Scope
4. Parties Bound
5. Number of Employees Covered
6. Date and Period of Operation and Review
7. Relationship to Parent Awards
8. Single Bargaining Unit
9. Shared Mission for Ministry for Culture & the Arts—ArtsWA Division
10. The Consultative Process to Achieve this Agreement
11. What Do We Want To Achieve Through Enterprise Bargaining?
12. Objectives Of This Agreement And Steps To Get There
13. Strategic Issues to Improve Productivity
14. Workplace Change Initiatives to Improve Productivity
15. Workplace Cost Reduction Initiatives
16. Past Productivity Initiatives
17. Parental Leave
18. Consultative Processes
19. Dispute Resolution Procedures
20. Salary Increases
21. Federal and State Wage Principles

3.—SCOPE

The Agreement shall apply to the Ministry for Culture & the Arts employees who are employed within ArtsWA and are eligible to be members of the Civil Service Association of Western Australia (Inc.)

4.—PARTIES BOUND

(1) The Employer—

The Director-General of the Ministry for Culture & the Arts.

ArtsWA is a service division of the Ministry for Culture & the Arts.

(2) The Union—

The Civil Service Association of Western Australia (Inc.)

(3) The parties bound by this Agreement will oppose any subsequent application by any body or organisation to be joined to this Agreement.

5.—NUMBER OF EMPLOYEES COVERED

It is estimated that 34.5 employees will be covered by this Agreement.

6. DATE AND PERIOD OF OPERATION AND REVIEW

(1) This agreement shall be registered in the Western Australia Industrial Relations Commission (WAIRC) and shall operate from the beginning of the first pay period commencing on or after the date of registration and shall remain in force until 31 December 1997.

(2) The parties will review this agreement six months prior to the date of expiration of this agreement as to the renewal or replacement of the agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this agreement.

(4) During the life of this agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis for future negotiations.

(5) Following the process of reviewing this agreement it will be renewed or replaced by another agreement or cancelled as appropriate.

The pay quantum achieved and the working arrangements introduced as a result of this agreement will remain and form the base for future agreements or continue to apply in the absence of a further agreement.

(6) The agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the agreement by notification in writing to the other party and to the WAIRC.

7.—RELATIONSHIP TO PARENT AWARDS

This agreement shall be read and interpreted wholly in conjunction with the Public Service Award 1992 provided that, where there is any inconsistency, this agreement shall prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

(1) The Organisations of employees covered by this agreement have formed a Single Bargaining Unit (SBU) in accordance with the requirements of the January 1992 State Wage Case Decision of the Western Australian Industrial Relations Commission (72 WAIG 191) and the October 1991 National Wage Decision of the Australian Industrial Relations Commission (PRINT KO300).

(2) The SBU has held negotiations with the Ministry for Culture & the Arts—ArtsWA Division and reached full agreement on the terms of this agreement.

(3) This agreement has been presented to employees of ArtsWA who have endorsed it.

9.—SHARED MISSION FOR MINISTRY FOR CULTURE & THE ARTS—ARTSWA DIVISION

(1) The Parties to this agreement are committed in striving to achieve the ArtsWA mission which is—

TO ENSURE ALL WESTERN AUSTRALIANS HAVE REASONABLE ACCESS TO QUALITY ARTS ACTIVITIES AND CULTURAL EXPERIENCES AND TO ENCOURAGE THE ECONOMIC VIABILITY OF THE ARTS AND CULTURAL INDUSTRY

(2) In achieving our mission we have three primary objectives which shape the way we will operate. These are—

- Arts Portfolio Integration

Facilitate the adoption of policies and initiatives for arts and cultural development across the Arts Portfolio

- Cultural Industry Development

Maximise the integration of arts and culture into the economic and social activities of the State.

- Arts Investment

Provide access to a wide range of high quality arts activities for the people of Western Australia.

10.—THE CONSULTATIVE PROCESS TO ACHIEVE THIS AGREEMENT

(1) In order to achieve this agreement the parties agreed to form a Single Bargaining Unit, comprising management, employees and union representatives.

(2) The process established in arriving at this agreement involved regular consultative meetings between the Civil Service Association of Western Australia (Inc.), ArtsWA and employee representatives.

(3) All staff were consulted on the benefits they wished to derive from an enterprise agreement. They were also invited to contribute to the identification of past productivity and, more importantly, to identify future productivity and cost savings initiatives.

(4) Accordingly, many of the initiatives for “working smarter” outlined in this agreement were identified by staff, and in some cases staff are already implementing them.

(5) The consultation process took the form of planning workshops (both all-of-ArtsWA and smaller groups). Staff were kept informed about progress with the Bargaining process through regular communication updates, and they were also given several opportunities to comment on various drafts of the Enterprise Agreement.

(6) The approval process involved all employees at the workplace. All employees received a copy of the agreement in advance of an explanatory overview provided in the workplace. Employees then voted, resulting in endorsement of the agreement.

(7) These processes will cease to exist once this agreement is ratified by the Western Australian Industrial Relations Commission.

11.—WHAT DO WE WANT TO ACHIEVE THROUGH ENTERPRISE BARGAINING?

ArtsWA is a quality organisation that will continually strive to improve its business processes and performance. Enterprise Bargaining will assist this by—

- (1) Improving the quality of working life for all our employees.
- (2) Facilitating an efficient improvement process by encouraging all employees, management and workforce, to identify and deal with real productivity barriers in a participative manner.
- (3) Continuous improvement of all processes to achieve reduced cost, less waste and improved quality, technology, work organisation, customer service, delivery, timeliness, safety and training.
- (4) Employees having a strong focus on satisfying internal and external customer service.
- (5) Encouraging and facilitating teamwork and team performance with the ultimate objective of achieving self-managed work teams with effective leadership at all levels.
- (6) Staff development, by which individuals can develop their competencies individually and collectively to meet the needs of ArtsWA.
- (7) Employees co-operating with each other and other work teams.
- (8) Employees collecting and using necessary data to improve organisational performance.
- (9) Consolidating consultative processes to build an organisation in which everyone contributes and performance is rewarded.
- (10) Identifying benchmarks as a basis for auditing the whole organisation on a regular basis.
- (11) Continuing and supporting the programme of structural efficiency and workplace reform commenced in 1989. The programme of work to be completed is contained within the various Memorandums of Agreements, Awards, understandings and agreements reached in various formal consultative forums.

12.—OBJECTIVES OF THIS AGREEMENT AND STEPS TO GET THERE

(1) In accordance with the National and State Wage Fixing Principles, the parties acknowledge that a broad agenda must be considered in the implementation of improved productivity within ArtsWA.

(2) The following three sections outline the mutual approach between employees and management to improve work performance and the achievement of both internal ArtsWA objectives and the wider portfolio objectives of improving the effectiveness and efficiency of the administration of the arts portfolio and to increase public access and participation in the arts.

Fundamental to the achievement of these is a commitment of employees to embrace these initiatives and to take a proactive role in delivering these to a level of quality acceptable to customers and stakeholders. Quality will be monitored through regular customer/stakeholder surveys.

The three sections are—

Section 11—Strategic Direction

This section develops the strategic direction for ArtsWA in respect to its internal and external objectives as outlined above. The request for ArtsWA to take on a wider role in arts portfolio co-ordination represents an increase in work output which will be achieved by the existing employee complement.

Section 12—Workplace Change Initiatives

This section contains initiatives to improve the way in which work is performed in order to achieve the outputs and outcomes specified in Clause 13.—Strategic Issues to Improve Productivity. Elements such as the establishment of self-managed work teams, work teams establishing key performance indicators and measuring and monitoring them and implementation of continuous improvement strategies, including the concept of devolution of work as a business improvement strategy, will set the foundation for sustainable productivity improvements.

Employee participation is an integral part in achieving meaningful reform of the way in which work is performed.

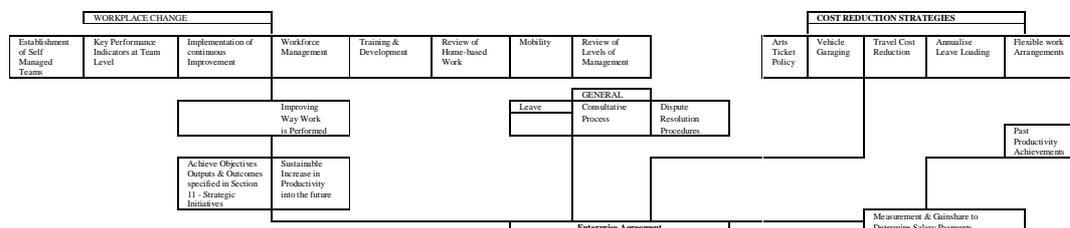
Section 13—Workplace Cost Reductions

These are areas which employees have indicated that cost reductions can be achieved through either benefit sacrifice or adopting improved administrative processes. Employee co-operation and involvement is fundamental to the successful achievement of these initiatives.

(3) The remainder of the agreement costs past productivity initiatives (Clause 16) which together with future productivity initiatives is used to calculate and determine the pay quantum (Clause 20), leave conditions (Clause 17), Consultative Processes (Clause 18) and Dispute Resolution Processes (Clause 19).

A schematic representation of the agreement appears below.

SCHMATIC REPRESENTATION OF THE ARTSWA ENTERPRISE BARGAINING AGREEMENT



13.—STRATEGIC ISSUES TO IMPROVE PRODUCTIVITY

(1) The Public Sector Reform Committee of Cabinet commissioned a review of the Arts Portfolio, which was undertaken by Dr Wally Cox. The Cox Report, released in late 1995, recommends an expanded role for ArtsWA, both in its existing responsibilities as co-ordinator of the arts portfolio, and as the agency charged with implementing the structural and administrative reforms recommended in the Cox Report. Specifically ArtsWA will be required to facilitate a corporate planning and support service for the six agencies of the portfolio, on top of its existing functions.

Outcomes to be achieved from these strategies are—

- effective co-ordination of the activities in the arts portfolio.
- effective administration of the expanded role of ArtsWA.
- employees sharing and working towards a common vision and strategy, and outcomes to be achieved both at ArtsWA and portfolio level.
- the devolution of the provider functions currently performed by ArtsWA to other appropriate Government agencies and/or arts agencies.

- employees working smarter and performing the expanded portfolio role without any increases in employee numbers.

(2) ArtsWA will be required to perform its expanded role with the same number of staff. In addition staff will need to undertake professional development and technical training (eg to use new hardware and software to deliver the combined IT and HR services; to understand the principles of contemporary management and continuous improvement), but there can be no diminution of their duties while they are learning the skills and techniques necessary for the fulfilment of their expanded roles (see also subclause 14(7)).

The following initiatives will be addressed—

(1) REFORM AGENDA FOR THE ARTS PORTFOLIO

The parties agree on the importance of implementing Government reform across ArtsWA and the arts portfolio, and specifically the recommendations of the arts portfolio Review as endorsed by the Minister.

To expedite implementation the parties agree on the following initiatives—

- implement the recommendations of the Cox Report including the development of a portfolio strategic plan.
- develop and implement a portfolio-wide corporate services bureau, IT plan, plan for cultural tourism and marketing plan, and re-engineer the communications system.

OBJECTIVE

To implement the Cox Review for the Public Sector Reform Committee of Cabinet to improve the effectiveness and efficiency of the administration of the portfolio and to increase public access and participation in the arts.

The following targets/milestones have been identified. In themselves they tend to represent outputs which will in turn define specific outcomes in relation to the objective of improving effectiveness and efficiency.

TARGET/MILESTONE—

BY 1 July 1996

- Facilitate the development of a portfolio strategic plan and launch publicly by March 1996.
- Devise and implement the 'modified status quo' structure for the portfolio, as recommended by the Cox Report, in line with portfolio strategic plan, by March 1996.
- Implement purchaser provider agreements with each of the portfolio agencies by 1 July 1996.
- Develop and install a new Ministerial correspondence tracking and communication system by the end of March 1996. Extend the system to link each agency to the Minister's office by June 1996.
- Re-engineer total communications system between portfolio agencies, and Minister's office by May 1996.
- Develop a 5-year integrated marketing initiative plan for portfolio by June 1996.
- Develop an integrated tourism strategy for portfolio by June 1996.
- Develop an asset management plan for the portfolio by June 1996.
- Have established a portfolio financial services bureau by March 1996.
- Co-ordinate the development of a Portfolio IT strategy by June 1996.

BY 1 January 1997

- Have run a number of portfolio cross promotions and have a co-ordinated plan in place for 1997 by December 1996.

- Review further opportunities to streamline processes such as government reporting requirements by December 1996.

Management and Staffing

In line with the Cox recommendations of an enhanced policy and planning role and major program management it is estimated that up to 2 additional FTEs would be required to implement the programme outlined under Reform Agenda for the arts portfolio.

Some of this is met through savings in other areas and some is met through the initiatives outlined in Clause 14.—Workplace Change Initiatives to Improve Productivity of this agreement.

Management and staff are committed also to developing skills and designing new systems to ensure the outcomes are met within the target dates established.

(2) FINALISED FRAMEWORK FOR THE REDEVELOPMENT OF THE PERTH CULTURAL CENTRE

The Perth Cultural Centre has been identified as one of the 13 precincts in the City for People strategy.

The parties agree to finalise the framework for redevelopment of the Perth Cultural Centre, and implement recommended strategies, including private sector involvement in commercial development.

To achieve this the parties agree to implement the following initiatives to expedite the process—

- complete the report
- establish a devolved management structure
- develop a financial plan and seek capital works funding.

OBJECTIVE

It is proposed to finalise the framework for the redevelopment of the Perth Cultural Centre in order to better link the precinct with the city and with Northbridge, to establish a single management entity and to increase patronage of the institutions within the precinct. The following targets and milestones represent strategies to achieve the objective.

TARGET/MILESTONE—

BY 1 July 1996

- Complete the report of the Cultural Centre Development Committee and present to the Minister.
- Develop a 2-year financial plan for the project by June 1996.
- Establish a management structure with Western Australia's Building Management Authority for the project by June 1996.

BY 1 January 1997

- Secure private sector involvement in at least two developments in the Cultural Centre by December 1996.

BY 31 December 1997

- \$3 million of capital works approved and implemented within the term of this agreement.

Management and Staffing

The strategies identified to deliver the outcomes specified will require the development of new skills in contract management and planning.

(3) CONSOLIDATION OF ART AND URBAN RENAISSANCE STRATEGIES

The parties agree to further consolidate the art and urban renewal strategies to create new opportunities for artists, with particular emphasis on private sector initiatives and the establishment of formal links between the arts portfolio and the Capital City Committee.

OBJECTIVE

To consolidate the art and urban renewal strategies in order to create new opportunities for artists and

promote the incorporation of art in urban renewal projects and infrastructure projects.

TARGET/MILESTONE—

BY 1 July 1996

- Links established and operating effectively with Capital City Committee by February 1996.

BY 1 January 1997

- Examine feasibility, and devolve Public Art programme by December 1996.

BY 31 December 1997

- Facilitate ten presentations to private sector developers on public art by December 1997
- Commission and contract at least ten new artists' projects within the term of this agreement.

Management and Staffing

There has been an enormous growth in the demand for ArtsWA's input on issues of art in public places' in recent years. Future demands and developments through the Perth for People strategy and other infrastructure projects will necessitate careful planning and the outsourcing of these services. Staff will need to develop higher order strategic planning, programme and contract management skills.

(4) **NEW APPROACHES TO INVESTMENT IN MAJOR ARTS ORGANISATIONS**

The parties agree to introduce new approaches to investment in the major arts organisations, including performance-based contractual arrangements, establishment of an arts investment trust and an arts marketing service and increased private sector involvement.

OBJECTIVE

To streamline administration of arts investment processes and reduce the dependence of arts agencies on government funding.

TARGET/MILESTONE—

BY 1 July 1996

- Introduce performance-based triennial funding and finalise agreements for at least 15 organisations by June 1996. Agreements to include targets over three years on—
 - increase in income from non-State Government sources.
 - increase in working capital levels.
 - increase in net tangible assets.
 - increase in audience attendance over the period of this agreement.
- Devolve funds to Country Arts WA from 1 January 1996 including touring, Arts Council and country community arts project funding.
- Refine panel process during 1996/1997 to reduce costs including amalgamating the Music, Dance, and Theatre panel into one Performing Arts panel.
- Launch an Arts Investment Trust by the end of March 1996.
- Investigate marketing strengths and weaknesses of arts agencies by June 1996.
- Revise the Arts Investment Handbook and application form in accordance with feedback from the Customer Service Council and recent reports, including the Publishing Review and Youth Arts Working Party, by March 1996.

BY 1 January 1997

- Evaluate the potential for larger agencies to take on support/mentoring roles for smaller agencies or organisations (eg Fremantle Arts Centre and Evos Music; West Australian

Symphony Orchestra and West Australian Youth Orchestra) by December 1996.

- Define and announce a marketing support scheme, based upon outcomes of the abovementioned investigation, by September 1996.

BY 31 December 1997

- Secure an additional 30 nominations under the State Arts Sponsorship Scheme to encourage corporate sector sponsorship.
- Devolve Community Arts funding to Community Arts Network, and Research and Development funding to the Perth Institute of Contemporary Arts, following the model of Country Arts WA, by June 1997.
- Work towards the amalgamation of management functions of Government-funded arts agencies (eg Dance, Country Arts/CAN) by December 1997.

Management and Staffing

To achieve the outcome specified, staff will require a broader range of skills in planning, contract management and finance/accounting. Staff of the Arts Investment Division have commenced training in basic accounting including interpreting business plans, profit and loss statements and balance sheets.

(5) **MULTIMEDIA STRATEGY**

The parties agree to develop a multimedia strategy in order to create opportunities for the cultural sector.

OBJECTIVE

To better utilise new technology for dissemination of information about ArtsWA; to create avenues by which artists may have access to new technology for the making of art; to forge strategic partnerships between the arts and multimedia industries to create new opportunities for Western Australia.

TARGET/MILESTONE—

BY July 1996

- Strategy to ensure that involvement in the establishment of the Co-operative Multimedia Centre (Imago) maximises opportunities for WA artists developed by March 1996.
- ArtsWA Home Page on the Internet established by June 1996.

BY July 1997

- A presence on the Internet established for at least 12 months and ArtsWA successfully using the Internet for core business by June 1997.

BY December 1997

- Multimedia strategy fully implemented within the life of this agreement.
- Mooditj project completed and CD Roms delivered to all Australian schools and libraries as per the contract with consortium partners.

Management and Staffing

Multimedia is becoming integral to the arts. Whilst ArtsWA currently enjoys 100% word processing literacy a range of other skills will need to be developed. The multimedia initiative represents a new and expanding role which will be undertaken with existing staff resources.

(6) **ABORIGINAL CULTURAL INITIATIVES**

The parties agree to implement Aboriginal Cultural Initiatives in conjunction with other Government authorities to ensure economic, cultural and social outcomes. Priority will be given to regional areas.

This will be achieved through improved co-ordination of funding between agencies (ATSIC, Aboriginal Affairs Department, ArtsWA). In the first instance

priority will be given to the Goldfields and Kimberley regions.

OBJECTIVE

To increase the number of investments in Aboriginal arts projects by 10 %.

TARGET/MILESTONE—

BY 1 July 1996

- An agreement with the Aboriginal Affairs Department on the guidelines for projects to be funded under the new 95/96 Aboriginal investment funds in place by June 1996
- Re-assess across the arts portfolio the support for Aboriginal cultural activities by June 1996.
- Complete a feasibility study on the co-location of Aboriginal arts organisations in Broome by June 1996.

BY 31 December 1997

- A 10 % increase in the number of investments in Aboriginal arts projects.

Management and Staffing

Aboriginal cultures are amongst the world's oldest living cultures. Strategies will need to be developed in partnership with other agencies to increase cross-cultural training and provide opportunities for Aboriginal artists and communities to preserve and record Aboriginal culture in Western Australia and to maintain and develop contemporary Aboriginal culture.

(7) **ARTS AND EDUCATION REVITALISATION PLAN**

The parties agree to implement a program to involve the cultural industry in a revitalisation of the Arts and Education Partnership Plan and the development of a broad youth arts strategy.

OBJECTIVE

To develop and implement a youth arts strategy with identifiable targets.

TARGET/MILESTONE—

BY 1 July 1996

- Develop a broad youth arts policy to guide ArtsWA strategy by June 1996.
- Identify funds available for youth arts by March 1996.
- Establish an out-sourced School Arts Visits Scheme by June 1996.

BY 31 December 1997

- Introduce a short-notice investment scheme for Youth Arts activities by December 1997.
- Identify a youth arts officer position (part FTE) by June 1997.

Management and Staffing

As part of the process of developing a youth policy, a commitment has been given to support implementation with 0.5 FTE from within existing resources. This will require further adjustment to other work areas.

(8) **INTERNATIONAL CULTURAL OPPORTUNITIES**

The parties agree to further extend international cultural opportunities, with emphasis on the cultural component of Sister State relationships and the development of export markets for Western Australian cultural goods and services, through the formulation of strategic partnerships and the utilisation of new marketing opportunities.

OBJECTIVE

To fulfil the requirements of the cultural components of WA's three Sister-State agreements, and to create export and exchange opportunities for the Western Australian cultural sector.

TARGET/MILESTONE—

BY 1 July 1996

- Re-negotiate Federal funding for the Cultural Industries Services Scheme by June 1996.
- Secure participation of at least one Western Australian project in the India Promotion by March 1996.
- Establish a portfolio-wide mechanism to co-ordinate all international activities in the Portfolio by June 1996.

BY 1 January 1997

- Introduce an artists' exchange program in the Hyogo Sister-State relationship by December 1996.

BY 31 December 1997

- Implement the cultural components of the East Java Sister-State relationship, as determined by the current five-year agreement between Western Australia and East Java.

Management and Staffing

The involvement of ArtsWA in international cultural initiatives will become more focussed on particular sister-state agreements and specific Government priorities. This will require the re-design of various support mechanisms and services to achieve a highly developed strategic partnership approach.

(9) **DEVELOPMENT OF REGIONAL CULTURAL PLANNING**

The parties agree to facilitate the development of regional cultural planning, including the provision of services by the arts portfolio. This will be realised by—

- encouraging more contribution/activity/involvement by local Government.
- co-ordinating the delivery of services from the arts portfolio.
- devolution of non-core functions/roles.

OBJECTIVE

To establish a clear and rational process for regional cultural planning involving at least 12 local government authorities.

TARGET/MILESTONE—

BY 1 January 1997

- Facilitate the development of at least six regional cultural plans to guide infrastructure development and service provision in the regions by December 1996.

BY 31 December 1997

- Implement a Regional Cultural Planning policy to facilitate an increase in the number of local and regional government bodies which have cultural development plans, which support the appointing of cultural/arts officers and the development of capital works of benefit to the arts and increased planning and co-ordination across local government authorities.

Management and Staffing

ArtsWA and portfolio agencies (with the exception of LISWA) do not have a well developed mechanism to provide services to country Western Australia. A new partnership policy with local government has been developed and will require greater co-ordination to implement.

(10) PERFORMANCE MANAGEMENT SYSTEM

OBJECTIVE

To inculcate within the staff a clear commitment to achieving the above strategies and the implementation targets for the strategies.

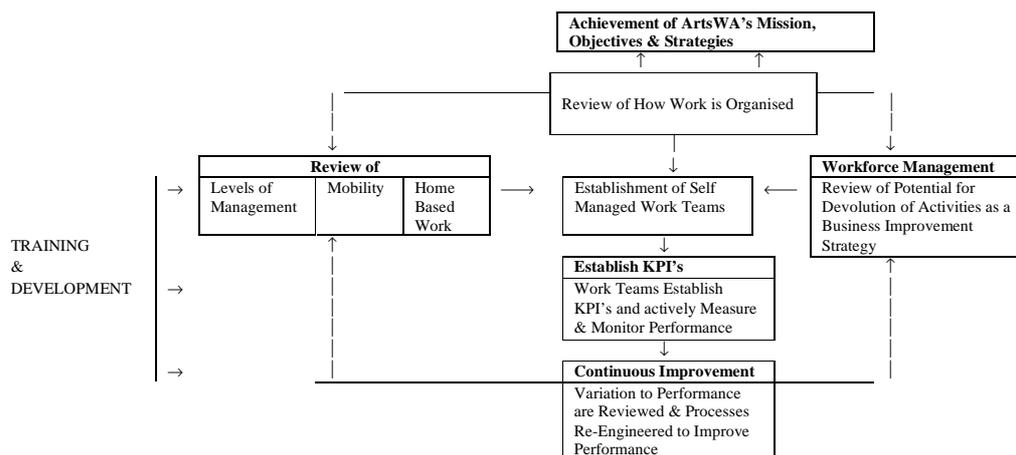
This will now be achieved by integrating the strategies into the PMS. The PMS will be reviewed to ensure it conforms to the new Public Sector Human Resource standards and captures the strategies, targets and milestones in this agreement.

14.—WORKPLACE INITIATIVES TO IMPROVE PRODUCTIVITY

(1) OVERVIEW OF WORKPLACE CHANGE CONCEPT

Making the workplace more effective and efficient is central to achieving ArtsWA's mission, objectives, strategies and the external objectives/outcomes of Arts Portfolio Co-ordination. Employee commitment and participation in these processes is an integral to workplace change.

The model below depicts how the following initiatives will interact to improve the way work is performed.



(2) WORKPLACE CHANGE

Any move to alter the way work is arranged must support the organisation's mission and objectives, and be consistent with organisational objectives. The focus must be on satisfying our customers' requirements and delivering a service in the most effective and efficient way. Workplace-specific arrangements need to be developed to match the function of the particular workplace and access by customers.

The parties acknowledge that these initiatives will result in progress towards changes in the way the workforce is organised—for example job design, multiskilling, etc.

During the life of this agreement the parties agree to review the way work is delivered, prepare strategic and business plans, consolidate the customer charter and introduce modification to office management processes and practices.

It is agreed that any changes to work arrangements and practice will continue to be developed through full employee participation.

TARGET/MILESTONE—**By 1 July 1996**

- Produce a three-year strategic plan for ArtsWA by June 1996.
- Establish an orderly planning cycle for ArtsWA by March 1996.
- Establish an effective medium (possibly staff newsletter, or weekly staff meeting) to enhance communication for staff by March 1996.

BY 1 January 1997

- Introduce a monitoring process to manage the responses to the reporting requirements of Government by December 1996.
- Further implement and consolidate the Customer Service Charter on a continuous basis.
- Introduce modifications to office management in accordance with feedback from customer and staff surveys.
- Ensure all staff are aware of the principles and practices of customer service.

(3) ESTABLISHMENT OF EMPOWERED SELF-MANAGED WORK TEAMS

ArtsWA is currently divided into three Divisions, Arts Investment, Industry and Portfolio Services and Corporate Services, each operating discrete programs. This vertical structure occasionally leads to duplications and to lack of communication.

One of the integral components of the workplace change process will be the move towards implementation of work teams, many of which will probably cross the existing divisions.

Staff have been involved in the identification of potential teams, and the development of the mechanisms by which they will work. Some move towards the implementation of teams has been made during the drafting of this Enterprise Agreement.

The parties agree that there is a need to break down divisional barriers in the workplace and that this will be best achieved through the introductions of empowered self-managed work teams.

Establishment of empowered self-managed work teams is seen as central to improving the delivery of the strategies outlined in Clause 13.—Strategic Issues to Improve Productivity.

The parties acknowledge that such changes require ownership by all employees and that the achievement of empowered self-managed work teams will be achieved by involving all employees in the design, development and implementation.

Steps to achieve this will be—

- education of employees on the concept of empowered self-managed work teams.
- staff planning workshops to determine how best to implement work teams given the objectives and strategies to be achieved (taking into account factors outlined in subclause 14(2)).
- determining team boundaries, outcomes and accountabilities.
- determining how the team will be constructed, the roles of team members and the training

requirements for each team member to enable them to effectively perform their assigned tasks.

TARGET/MILESTONES

By 1 July 1996

- Conduct awareness/education for employees on empowered self-managed work teams by the end of April 1996.
- Conduct planning workshops by the end of May 1996.
- Teams determined and boundaries, outcomes and accountabilities defined by the end of June 1996.

By 1 January 1997

- Employees assigned to teams and roles defined by the end of July 1996.
- Training requirements for team members determined and training commenced by the end of August 1996.

(4) WORKPLACE KEY PERFORMANCE INDICATORS

The parties have agreed to move towards the implementation of empowered self-managed work teams throughout ArtsWA to fundamentally alter the way work is organised.

Part of the agreed direction will be the implementation of work team-based key performance indicators and the necessary training for its introduction in the workplace.

Each work team will be required to establish six key performance indicators relevant to its work, which will include at least two of the three corporate indicators in the following categories—

- customer satisfaction.
- employee satisfaction.
- controllable costs.

The teams will establish performance targets (improvements in the KPIs over a period of time) which are realistic and achievable, and will be responsible for measuring, monitoring and evaluating their KPIs, recognising that they are an instrument for measuring variation and hence important to indicate areas on which to focus continuous improvements processes.

TARGET/MILESTONES—

BY 1 January 1997

- Work teams trained on implementation of KPIs by the end of August 1996.
- KPIs established by work teams by the end of October 1996.

BY 31 December 1997

- Work teams actively monitoring and reporting their Key Performance Indicators throughout 1997 and the process reviewed by December 1997.

(5) CONTINUOUS IMPROVEMENT STRATEGY

It is agreed that there will be full support and involvement to the on-going process of continuous improvement and this is a necessary extension of the Establishment of Work teams (subclause 14(3) and measuring variation in performance (subclause 14(4)).

This strategy is targeted to support ArtsWA's mission and objectives. A fundamental ingredient in the achievement of this strategy is the involvement of all ArtsWA employees in its development and implementation. The consultative mechanisms and the education process will be critical to this process.

The process of continuous improvement will be progressively implemented within ArtsWA. The parties agree to promote the involvement of all employees in continuously improving their workplaces and to work actively to remove barriers to its implementation.

In particular, the parties agree to focus on the following issues—

(a) Customer Focus

- * Building customer requirements into the design of new products, services or processes.
- * Ensuring that all employees understand that organisational success comes from satisfying internal and external client requirements.

(b) Leadership and Behaviour

All employees:

- * having a shared vision of the future.
- * focusing on achieving the long-term aims of the organisation whilst continually satisfying short-term requirements.
- * demonstrating ethical and best behaviours by example.
- * “coaching” and not “judging” behaviour.
- * eliminating fear and developing trust amongst all employees.

(c) Involvement of People

- * Systematically involving all employees through team work.
- * Ensuring communication is open, effective and two-way, with clear, concise guidance.
- * Empowering employees at all levels to be involved in making decisions in the workplace wherever possible.
- * Providing employees with necessary training to assist them to undertake continuous workplace improvement.
- * Understanding and acceptance by all employees that everyone is responsible for the quality of his/her work.

(d) Acting on Facts and Knowledge

- * Making decisions on the basis of accurate information, data and knowledge.
- * Developing effective and efficient processes to solve problems and improve quality.
- * Ensuring that all employees understand their responsibilities, how to measure their effectiveness and how to target improvement.
- * Collecting data that is informative and relevant so that it can be interpreted correctly.

(e) Emphasis on Process and Systems

- * Participating in cross functional improvement activities.
- * Ensuring that the processes are documented, controlled and constantly improved.
- * Involving external suppliers as partners in the quality improvement process.

(f) Emphasis on Continuous Learning

- * Treating mistakes and problems as opportunities to learn and improve.
- * Standardising gains and communicating improvements to other areas that might also learn from them.

(g) Structure for Continuous Improvement

- * Developing a framework to enable employees to submit ideas, obtain decisions and receive feedback on their ideas.
- * Developing appropriate organisational structures to support the process of continuous improvement.

- * Recognising and rewarding employees' efforts and achievements through gainsharing (see Clause 20.—Salary Increases).

TARGET/MILESTONE—

BY 1 January 1997

- A strategy for continuous improvement developed by the end of August 1996.
- Employees trained in the application of continuous improvement principles by the end of October 1996.
- Work teams actively using continuous improvement techniques to improve work processes by the end of December 1996.

(6) **WORKFORCE MANAGEMENT**

The parties recognise that ArtsWA provides quality services. The parties are committed to improve the processes of ArtsWA.

Every endeavour will be made to improve ArtsWA's competitive position relative to industry best practice benchmarks through continuous improvement processes.

ArtsWA, in consultation with employees and their union representative, will work towards determining the most effective and efficient means of using internal and external resources, with proper regard to the needs, security, training and development and long-term efficiency of employees within ArtsWA.

The parties agree that arbitrary job reductions are not a sound basis upon which improvements to productivity are secured. ArtsWA agrees that it will not make significant changes to the permanent workforce without consultation with the Union. The parties agree that the Peak Consultative Forum (See Clause 18.—Consultative Processes) will be the forum to discuss and consult on all matters affecting workforce management, including such matters as redeployment, retraining and redundancy.

TARGET/MILESTONE

BY 1 JULY 1996

- Activities suitable for devolution/outsourcing identified by the end of June 1996.

BY 1 JANUARY 1997

- Business analysis undertaken of areas identified and strategy developed for each activity by the end of August 1996.

(7) **LEVELS OF MANAGEMENT AND SUPERVISION**

There is a need to reduce the number of levels of management and supervision and the parties agree to work together to achieve this, including the reorganisation of supervision and roles in some areas.

TARGET/MILESTONE—

BY 1 July 1996

- Levels of management and structure are addressed by the end of June 1996.

(8) **MOBILITY**

ArtsWA is an organisation that is customer focused. In this, we need to tailor our services to the changing needs of the customers and the community.

There is an acceptance that there is a need for employees to move more quickly to areas of work in response to the changing work loads and skills requirements.

This includes mobility within and between branches and across functional boundaries.

Any movement will be done only after consultation with the employees involved and in direct response to addressing customer needs.

(9) **HOME BASED WORK**

The parties agree to examine the potential for the introduction of limited home-based work during the life of this agreement.

In examining this aspect the parties will consider—

- the minimum days per month required to attend the office.
- other occasions where it would be imperative to attend the office, eg for face-to-face contact.
- information technology requirements to support such initiative.
- general principles under which it would work.
- the possibility of pilot testing as part of the examination process.

TARGET/MILESTONES—

BY 31 December 1997

- A strategy/policy for home-based work fully developed by December 1997.

(10) **TRAINING AND DEVELOPMENT**

All employees will be provided with the relevant training and development to enable them to carry out their range of duties including the requirements of the Enterprise Bargaining Agreement, the establishment of empowered self-managed work teams, definition of KPIs and the implementation of continuous improvement. All training will be documented and recorded in the employee's record of service.

The parties agree that staff development must reflect both the needs of ArtsWA and the employee, and must provide incentive for the acquisition of skills.

The parties acknowledge that they have a joint commitment to the development of a more highly skilled and flexible workforce; the need to provide employees with greater employment opportunities through appropriate training; the need to remove barriers that prevent employees from fully utilising their acquired skills and the need to ensure that all employees have equal access to training for their identified training needs.

TARGET/MILESTONE—

BY 1 July 1996

- Prepare and implement a plan for training by June 1996.

15.—**WORKPLACE COST REDUCTION INITIATIVES**

(1) **ARTS TICKET POLICY**

ArtsWA currently purchases tickets for employees to attend cultural performances, as staff are required to attend arts and cultural events as part of their duties. Some complimentary tickets are provided to ArtsWA by arts organisations, but these are not sufficient for all required attendances.

Staff have agreed, as a cost-saving measure, to fund these attendances themselves.

Accordingly, the parties agree that the practise of ArtsWA purchasing tickets to cultural events will be discontinued.

They also agree that **should any** complimentary tickets be made available to ArtsWA these will be distributed equitably to employees, based principally on the needs of an employee in a particular position to be aware of the event for the effective performance of his/her duties.

TARGET/MILESTONES—

BY June 1996

- A cross-divisional work team to be formed and have developed a new policy on staff attendance at arts events.

(2) **TRAVEL COST RATIONALISATION**

The parties agree that every endeavour will be made to reduce the cost of travelling.

Staff have agreed to "work smarter" in order to rationalise the need to travel (alternatives already suggested by staff include teleconferencing, telephone conversations, multimedia communication and the Internet, attending local conferences with content similar to interstate or international ones, etc).

They will also undertake better advance planning of travel arrangements to take advantage of discounted advance ticket and accommodation packages.

TARGET/MILESTONES—

To achieve a 10 % reduction on the annual travel budget for each year of this agreement.

(3) VEHICLE GARAGING

At present two officers have take home garaging privileges which adds to the cost of running ArtsWA in terms of the marginal cost of using the vehicles for commuting and fringe benefit tax.

In line with Government policy, whilst the cars are first and foremost pool cars for use for ArtsWA purposes, from the date of operation of this agreement it is agreed that those employees extended take home privileges will pay the marginal cost associated with home commuting. To compensate those employees for the additional cost, during the life of this agreement the parties agree to examine the possibility of extending private use privileges to these employees on the same basis as that applicable to Senior Executive Service members in the context of developments in government policy.

TARGET/MILESTONE—**BY 31 December 1997**

- Private use policy is established by December 1997.

(4) ANNUALISED ANNUAL LEAVE LOADING

The parties agree that the annual leave loading will be annualised into the fortnightly pays of employees. This will not change the general principles applicable to annual leave loading, but instead of being paid it in a lump sum on the taking of annual leave it will be paid fortnightly as a salary component.

(5) FLEXIBLE WORK ARRANGEMENTS

With a relatively small number of employees the need exists for more flexible approaches to working hours. From time to time an employee will be required to continue to work and accumulate credits for flexi-leave. At present employees can accumulate 7½ hours of credits in one four-week period—any accumulation beyond this is forfeited. Employees are therefore penalised for putting work requirements before personal commitments. To overcome this and reward employees for flexibility, the number of hours that can be accumulated within a four-week period will be increased to 15 for the life of this agreement.

The rest of the flexi-leave policy will be retained in its entirety.

16.—PAST PRODUCTIVITY INITIATIVES

Over the past twelve months a number of initiatives have been implemented to improve the productivity of ArtsWA. These are:

- amalgamation of two positions (Level 7 & Level 5) into one Level 6 position in the finance area.
- abolition of Divisional Secretary position (Corporate Services) Level 2.
- amalgamation of Regional Arts and Community Arts officers and programs.
- devolution of aspects of the regional program to Country Arts WA, combined with the amalgamation of Regional and Community Arts, creating greater efficiency and allowing officer to take on other tasks.
- introduction of triennial funding which will refine workloads and free officers for other tasks.
- amalgamation of the Theatre and Music & Dance officers and programs.
- use of short-term contract staff for peak load times.
- preparation of induction kits for short-term staff
- amalgamation of grants approval letters and contracts so there is now only one piece of correspondence.
- multiskilling of the grants staff to access the database.
- introduction of more generic JDFs for the Industry and Portfolio Services Division, increasing the flexibility of movement of project officers.
- introduction of Email, Winfax and Word 6 to refine processing of correspondence. Reception telephone messages are now serviced via Email.

17.—PARENTAL LEAVE**(1) Definition**

- “Employee” includes full time, part time, permanent and fixed-term contract employees.
- “Replacement Employees” is an employee specifically engaged to replace an employee proceeding on parental leave.

(2) Eligibility for Parental Leave

- An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee’s spouse/partner.
- Where the employee applying for the leave is the partner of a pregnant spouse one week leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.
- An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.
- An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional day’s leave. The employee may take any paid leave entitlement in lieu of this leave.
- Subject to subclause (b) of this clause, where both partners are employed by ArtsWA the leave shall not be taken concurrently except under special circumstances and with the approval of the Employing Authority.

(3) Other Leave Entitlements

- An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave (PTO) for the whole or part of the period of parental leave or extend the period of parental leave with such leave.
- An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Employing Authority’s approval.
- An employee on parental leave is not entitled to paid sick leave and other paid award absences.
- Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.
- Where a pregnant employee not on parental leave suffers illness related to the employee’s pregnancy, or is required to undergo a pregnancy-related medical procedure, the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and Variation

- The employee shall give not less than four weeks notice in writing to the agency of the date the employee proposes to commence maternity leave stating the period of leave to be taken.
- An employee proceeding on parental leave may elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(5) Transfer to Safe Job

- Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.
- If the transfer to a safe position is not practicable, the employee may take leave for such period as is

certified necessary by a registered medical practitioner. This leave shall be treated as parental leave for the purpose of this agreement.

(6) Replacement Employee

- (a) Prior to engaging a replacement employee ArtsWA shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

(7) Return to Work

- (a) An employee shall confirm the intention to return to work by notice in writing to ArtsWA not less than four weeks prior to the expiration of the period of parental leave.
- (b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to subclause 17(2)(e) hereof, the employee is entitled to return to the position occupied immediately prior to the transfer.
- (c) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the part-time provisions of the relevant award.
- (d) Where the position occupied by the employee no longer exists the employee shall be entitled to the position of the same classification level with duties similar to that of the abolished position.

(8) Effect of Leave on Employment Contract

(a) Fixed Term Contract

An employee employed for a fixed term contract shall have the same entitlement to parental leave; however the period of leave granted shall not extend beyond the term of that contract.

(b) Continuous Service

Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant award or this agreement.

(c) Termination of Employment

An employee on parental leave may terminate employment at any time during the period of level by written notice in accordance with the relevant award.

18.—CONSULTATIVE PROCESSES

(1) The parties are committed to working together to improve the business performance and working environment of ArtsWA.

(2) Consultation in the context of this agreement is defined as information sharing and discussion on matters relevant to the decision-making processes of ArtsWA, and shall be conducted in such a way as to enable the parties to contribute to the decision-making process.

(3) It is agreed that consultation with employees and the Union party to this agreement on proposed changes to work organisation shall occur prior to change being made or implemented.

(4) Where ArtsWA proposes to make any changes likely to affect existing work practices, working conditions or employment prospects of employees, the Union and the staff affected shall be notified by ArtsWA as early as possible.

(5) It is acknowledged by the parties to this agreement that decisions will continue to be made by the Ministry for Culture & the Arts—ArtsWA Division, which is responsible and accountable to Government through statute, for the efficient and effective operation of its business.

(6) As part of this agreement, ArtsWA agrees to establish processes which will facilitate employee involvement.

(7) The process will be at two levels—

- at the workplace level employees will be involved in contributing to improve the efficiency and effectiveness of their work teams within set policies and guidelines.

- at the strategic and corporate level, the parties agree to establish a Peak Consultative Forum to monitor, review and have input into the progress of the implementation of this Enterprise Agreement and to actively share information and consult on corporate strategic issues affecting ArtsWA's business operations

(8) The parties to the Peak Consultative Forum will consist of senior management, a Union official and an employee representative from the CSA.

19.—DISPUTE RESOLUTION PROCEDURES

Any dispute, question or difficulty requiring resolution shall be dealt with in the following manner—

- (1) The employee concerned will raise the matter with the appropriate supervisor or team leader and attempt to resolve the issue.
- (2) If it is not resolved, the employee may raise the issue with the next more senior manager of ArtsWA for resolution.
- (3) If still unresolved, the matter may be referred to the appropriate Union, which will discuss the matter with ArtsWA.
- (4) Before the issue proceeds to the Western Australian Industrial Relations Commission, the Ministry for Culture & the Arts—ArtsWA Division will ensure that its Director-General (or nominee) and the Union will ensure that its Branch Secretary (or nominee) have been involved in the process.
- (5) If still not resolved, the matter will be referred to the Western Australian Industrial Relations Commission for reconciliation and/or arbitration in accordance with due process.

At levels (1) to (5) inclusive of the above, the employee may choose to have the Union representative or another employee in attendance.

While the above process is being pursued, work shall continue as normal.

The parties to this agreement may raise an issue to a higher level in the process at any time.

Levels (1) to (4) shall be completed within seven working days.

20.—SALARY INCREASE

(1) Salary increases will be paid to employees in the form of both a flat rate and percentage increase. These will be paid in the following—

	% increase	and	flat amount
at 1/1/96	2%	and	\$ 1320
at 1/7/96	1%	and	\$ 660
at 1/1/97	0.5%	and	\$ 330
at 31/12/97	NIL	and	\$ 474

(2) Payment of the last three payments will be subject to satisfactory achievement of the target/milestones outlined in this agreement. If there are any reasons why a target/milestone is not achieved, and, it is considered it is outside the control of the employees, this will be referred to the Peak Consultative Forum for deliberation.

(3) Any additional savings identified during the term of this agreement will be declared and included in the negotiations for the next agreement between the parties.

(4) A schedule of salaries appears at Appendix 1.

21.—FEDERAL AND STATE WAGE PRINCIPLES

(1) It is a condition of this agreement that there shall be no further wage increases for its life.

(2) The parties to the agreement shall be bound by the terms of the agreement for its duration.

(3) The parties to the agreement shall oppose any applications by other parties to be joined to this Enterprise agreement.

(4) The terms of this agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

(5) No provisions in this agreement shall operate to cause any employee a reduction in ordinary time earnings, or to cause a departure from the standards of the Australian Industrial

Relations Commission and Western Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

APPENDIX 1

MINISTRY FOR CULTURE & THE ARTS—ARTSWA DIVISION
SCHEDULE OF SALARIES
EXCLUDING ANNUAL LEAVE LOADING

Level 1	Descr.	Step	Annual Salary 31/12/95	F/Nt Salary 31/12/95	Annual Salary 1/1/96	F/Nt Salary 1/1/96	Annual Salary 1/7/96	F/Nt Salary 1/7/96	Annual Salary 1/1/97	F/Nt Salary 1/1/97	Annual Salary 31/12/97	F/Nt Salary 31/12/75	% Increase Over 2 Years
			(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Level 1	U/17YRS	1	10,873	416.86	12,410	475.80	13,195	505.86	13,591	521.04	14,065	539.22	29.35
	17 YRS	2	12,707	487.17	14,281	547.52	15,084	578.30	15,489	593.84	15,963	612.01	25.63
	18YRS	3	14,822	568.26	16,438	630.23	17,263	661.83	17,679	677.79	18,153	695.97	22.47
	19YRS	4	17,157	657.78	18,820	721.54	19,668	754.06	20,097	770.48	20,571	788.65	19.90
	20YRS	5	19,267	738.67	20,972	804.05	21,842	837.40	22,281	854.23	22,755	872.41	18.10
	1stYear	6	21,165	811.44	22,908	878.27	23,797	912.36	24,246	929.57	24,720	947.75	16.80
	2ndYear	7	21,817	836.43	23,573	903.77	24,469	938.11	24,921	955.45	25,395	973.63	16.40
	3rdYear	8	22,468	861.39	24,237	929.23	25,140	963.82	25,595	981.29	26,069	999.47	16.03
	4thYear	9	23,115	886.20	24,897	954.53	25,806	989.38	26,265	1006.98	26,739	1025.15	15.68
	5thYear	10	23,766	911.16	25,561	979.99	26,477	1015.09	26,939	1032.82	27,413	1050.99	15.35
	6thYear	11	24,417	936.12	26,225	1005.44	27,148	1040.80	27,613	1058.66	28,087	1076.83	15.03
	7thYear	12	25,166	964.83	26,989	1034.73	27,919	1070.39	28,389	1088.39	28,863	1106.56	14.69
	8thYear	13	25,684	984.69	27,518	1054.99	28,453	1090.84	28,925	1108.95	29,399	1127.12	14.46
	9thYear	14	26,450	1014.06	28,299	1084.95	29,242	1121.10	29,718	1139.36	30,192	1157.53	14.15
Level 2	1stYear	1	27,367	1049.21	29,234	1120.81	30,187	1157.32	30,668	1175.76	31,142	1193.93	13.79
	2ndYear	2	28,070	1076.17	29,951	1148.30	30,911	1185.08	31,395	1203.66	31,869	1221.83	13.54
	3rdYear	3	28,809	1104.50	30,705	1177.20	31,672	1214.27	32,161	1232.99	32,635	1251.17	13.28
	4thYear	4	29,590	1134.44	31,502	1207.74	32,477	1245.12	32,969	1264.00	33,443	1282.17	13.02
	5thYear	5	30,407	1165.76	32,335	1239.69	33,318	1277.39	33,815	1296.43	34,289	1314.60	12.77
Level 3	1stYear	1	31,530	1208.82	33,481	1283.60	34,475	1321.74	34,978	1341.00	35,452	1359.17	12.44
	2ndYear	2	32,405	1242.36	34,373	1317.82	35,377	1356.30	35,884	1375.73	36,358	1393.91	12.20
	3rdYear	3	33,307	1276.95	35,293	1353.09	36,306	1391.93	36,818	1411.54	37,292	1429.71	11.96
	4thYear	4	34,233	1312.45	36,238	1389.30	37,260	1428.50	37,776	1448.29	38,250	1466.47	11.74
Level 4	1stYear	1	35,503	1361.14	37,533	1438.97	38,568	1478.66	39,091	1498.71	39,565	1516.88	11.44
	2ndYear	2	36,498	1399.28	38,548	1477.88	39,593	1517.96	40,121	1538.20	40,595	1556.37	11.23
	3rdYear	3	37,522	1438.54	39,592	1517.92	40,648	1558.40	41,182	1578.85	41,656	1597.02	11.02
	With Commuted Overtime												
	1stYear	1+20%	42,604	1633.37	45,040	1726.76	46,282	1774.39	46,909	1798.45	47,478	1820.25	11.44
	2ndYear	2+20%	43,798	1679.14	46,258	1773.45	47,512	1821.55	48,146	1845.84	48,714	1867.65	11.23
	3rdYear	3+20%	45,026	1726.25	47,511	1821.51	48,778	1870.08	49,418	1894.62	49,987	1916.42	11.02
Level 5	1stYear	1	39,494	1514.15	41,604	1595.04	42,680	1636.29	43,223	1657.12	43,697	1675.30	10.64
	2ndYear	2	40,827	1565.25	42,964	1647.16	44,053	1688.94	44,603	1710.04	45,077	1728.21	10.41
	3rdYear	3	42,212	1618.35	44,376	1701.33	45,480	1743.64	46,037	1765.01	46,511	1783.18	10.19
	4thYear	4	43,649	1673.44	45,842	1757.52	46,960	1800.40	47,525	1822.05	47,999	1840.23	9.97
Level 6	1stYear	1	45,960	1762.04	48,199	1847.89	49,341	1891.68	49,918	1913.79	50,392	1931.96	9.64
	2ndYear	2	47,531	1822.27	49,802	1909.33	50,960	1953.72	51,544	1976.14	52,018	1994.32	9.44
	3rdYear	3	49,157	1884.61	51,460	1972.91	52,635	2017.95	53,228	2040.69	53,702	2058.86	9.25
	4thYear	4	50,893	1951.17	53,231	2040.80	54,423	2086.51	55,025	2109.60	55,499	2127.77	9.05
Level 7	1stYear	1	53,555	2053.23	55,946	2144.90	57,166	2191.65	57,781	2215.26	58,255	2233.43	8.78
	2ndYear	2	55,397	2123.85	57,825	2216.93	59,063	2264.40	59,689	2288.38	60,163	2306.55	8.60
	3rdYear	3	57,401	2200.68	59,869	2295.30	61,128	2343.55	61,763	2367.92	62,237	2386.10	8.43
Level 8	1stYear	1	60,658	2325.55	63,191	2422.66	64,483	2472.19	65,135	2497.21	65,609	2515.38	8.16
	2ndYear	2	62,991	2414.99	65,571	2513.90	66,887	2564.34	67,551	2589.81	68,025	2607.99	7.99
	3rdYear	3	65,884	2525.90	68,522	2627.03	69,867	2678.60	70,546	2704.65	71,020	2722.82	7.80
Level 9	1stYear	1	69,497	2664.42	72,207	2768.32	73,589	2821.30	74,287	2848.06	74,761	2866.24	7.57
	2ndYear	2	71,938	2758.01	74,697	2863.77	76,104	2917.72	76,814	2944.96	77,288	2963.13	7.44
	3rdYear	3	74,722	2864.74	77,536	2972.64	78,972	3027.67	79,697	3055.46	80,171	3073.64	7.29

SIGNATURE OF PARTIES TO THE AGREEMENT

Signed for and on behalf of Ministry for Culture & the Arts—ArtsWA Division by

.....Signed.....

Date: 2/7/97

in the presence of

.....Signed.....

Date: 2/7/97

Signed for and on behalf of the Civil Service Association of Western Australia Incorporated by

.....Signed.....

Date: 20/6/97

in the presence of

.....Signed.....

Date: 20/6/97

**MINISTRY FOR CULTURE & THE ARTS, LISWA
SERVICE DIVISION ENTERPRISE BARGAINING
AGREEMENT 1997.**

No. PSG AG 6 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ministry for Culture & the Arts

and

The Civil Service Association of

Western Australia (Incorporated)

and Others.

No. PSG AG 6 of 1997.

COMMISSIONER J. F. GREGOR.

22 August 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT

NO. PSG AG 6 OF 1997

Having heard Ms L Houghton on behalf of the first named party and Mr W Johnston and Mr G Thomson and Ms J Gains of on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document titled Ministry for Culture & the Arts, LISWA Service Division Enterprise Bargaining Agreement 1997, filed in the Commission on 4 July 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J. F. GREGOR,

[L.S.]

Commissioner.

MINISTRY FOR CULTURE
& THE ARTS

LISWA SERVICE DIVISION

ENTERPRISE BARGAINING AGREEMENT 1997

Library and Information Service of Western Australia

Alexander Library Building
Perth Cultural Centre, Perth WA 6000

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SECTION 1: TITLE AND CONTEXT OF THE
AGREEMENT

1.—TITLE

This Agreement shall be known as the Ministry for Culture & the Arts, LISWA Service Division Enterprise Bargaining Agreement 1997.

2.—LISWA'S MISSION STATEMENT

To provide and promote equitable access to information resources and services, which support the intellectual, economic, cultural, social and recreational needs of the people of Western Australia.

This Agreement is an important component of a broader strategic process by which the Library and Information Service of Western Australia shall confirm and satisfy the needs and expectations of its clients and provide a stimulating, cooperative and supportive working environment for its employees.

3.—OBJECTIVES OF THE AGREEMENT

The objectives of this Agreement are—

3.1 To gain employee and management commitment and contribution to the short term and long term direction of LISWA.

3.2 To gain employee and management endorsement and commitment for the implementation of measures that will improve efficiency and effectiveness within LISWA.

3.3 To ensure that gains made are shared equitably between the Ministry for Culture & the Arts, Library and Information Service of Western Australia Service Division (LISWA), its employees and the Government on behalf of the Western Australian community.

3.4 To ensure that the needs of LISWA's clients are met through the delivery of reliable, efficient and competitive services.

3.5 To promote the development of trust and motivation and to continue to foster enhanced employee relations.

3.6 To facilitate greater flexibility in decision making and allocation of human and other resources.

3.7 To promote increased satisfaction from jobs and broaden career opportunities for employees.

3.8 To develop and pursue changes on a continuing basis by using consultative and participative practices.

- 3.9 To promote health, safety, welfare and equal opportunity for all employees.

4.—WORKPLACE PHILOSOPHY

The following statements represent the beliefs which establish the parameters and principles for LISWA's Enterprise Agreement.

- 4.1 Team based structures represent the most efficient and effective way of working within LISWA. Teams focus attention on outputs and outcomes. Team development will be encouraged and rewarded.
- 4.2 Flexibility in the way work is organised and undertaken is paramount to achieving high quality service delivery. Work practices will be continually reassessed in the light of customer needs, operational requirements and business efficiency.
- 4.3. Creative, innovative, skilled and flexible employees are the most important means of serving our clients well. Job training needs, skill development and quality of work life will be continuously addressed.

5.—COMMITMENT AND FACILITATION

The parties enter into this agreement in good faith with a commitment to work together to achieve the objectives and planned productivity improvements and to pave the way for further benefits to clients, employees, and the Government on behalf of the community.

Following the commencement of this agreement, the Enterprise Bargaining Negotiating Committee will—

- * continuously monitor its implementation,
- * meet quarterly in the months of January, April, July and October to assess the value achieved from productivity improvements and consider the implications of such assessments in relation to Clause 2 of Section 4.
- * meet within a month of any party giving notice to another of concerns that implementation of the agreement is giving rise to unforeseen and undesirable consequences.

Whilst supporting the move to team based ways of working, the parties acknowledge the potential for change to create stress and agree to work together, through the EBNC, to attempt to find solutions if any employees become unsettled by the process.

6.—MANAGING SIGNIFICANT WORKPLACE CHANGE

Where the employer contemplates the introduction of major changes in program, organisation, structure or technology that are likely to have a significant effect on an employee or a group of employees, or is likely to entail terminations by way of a redundancy, the employer shall consult the employees and the relevant union as soon as possible on—

- (a) The proposed changes;
- (b) The expected effects of the changes on employees;
- (c) The measures for averting or mitigating the adverse effects of such changes on employees; and
- (d) Any other matters likely to affect employees.

Significant effect includes, but is not limited to—

- (a) Termination of employment;
- (b) Major changes to either the composition of the workforce or the operations carried out within the workplace;
- (c) Significant changes in the skills required of the employer's workforce;
- (d) The elimination or diminution of job opportunities and/or promotion opportunities;
- (e) The need for retraining or transfer of employees to other work or locations;
- (f) Restructuring of jobs.

SECTION 2: AGREEMENT DETAILS

1.—DEFINITIONS

In this Agreement, the following expressions shall have the following meaning—

“LISWA” means the Library and Information Service of Western Australia.

“Chief Executive Officer” means the Chief Executive Officer of the Library and Information Service of Western Australia, or the person acting as Chief Executive Officer or person having the delegated authority of the Chief Executive Officer.

“Cost Centre Manager” means an officer appointed to one of the following positions which is directly responsible and accountable to the Chief Executive Officer of LISWA—

Director J S Batty Library
 Director Public Library Services
 Director Public Records Office
 Director State Reference Library
 Director Corporate Support and Development
 Manager Bibliographic Services
 Manager Community Relations
 Manager Document Delivery Services
 Manager Finance and Building Services
 Manager Human Resources
 Manager Information Systems
 Business Manager
 Manager Preservation Services

- and such other positions as may be designated as Cost Centre Managers by the Chief Executive Officer from time to time.

“Employer” means the Director General of the Ministry for Culture & the Arts.

“Employee” for the purposes of this Agreement means someone who is referred to at Clause 3—Scope of this Section.

“EBNC” means the Enterprise Bargaining Negotiating Committee referred to at Clause 4.2—Single Bargaining Unit of this section, and shall comprise three management representatives, three employee representatives, and relevant union representatives.

“Government” means the State Government of Western Australia.

“Minister” means the Minister or Ministers of the Crown responsible for the administration of the Arts.

“Unions” means the unions and associations listed as parties to this Agreement in Clause 2—Parties to the Agreement of this Section.

“WAIRC” means the Western Australian Industrial Relations Commission.

“Workplace Delegate” means an employee elected from the financial membership of the relevant union who is charged with the duties and responsibilities as detailed by those rules applicable to the relevant union.

“Deputy Workplace Delegate” means an employee elected from the financial membership of the relevant union who is charged, in the absence of the Workplace Delegate, with the same duties and responsibilities of the Workplace Delegate.

2.—PARTIES TO THE AGREEMENT

This Agreement is binding upon those parties who are signatories to this Agreement as follows—

Director General of the Ministry for Culture & the Arts
 The Civil Service Association of Western Australia Inc
 The Australian Liquor, Hospitality and Miscellaneous Workers' Union
 The Shop Distributive and Allied Employees' Association of Western Australia
 Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all employees of the Ministry for Culture & the Arts, LISWA Service Division, including Senior Executive Service employees working in LISWA, who are members of or eligible to be members of the Associations/Unions party to this Agreement. Schedule 4 applies to Duty Officers performing duties at LISWA Service Unit.

4.—NUMBER OF EMPLOYEES COVERED

As at 1 July 1997 the number of employees subject to this Agreement are approximately 270.

5.—SINGLE BARGAINING UNIT

- 5.1 This Agreement has been negotiated through a Single Bargaining Unit.
- 5.2 The Single Bargaining Unit parties have established an Enterprise Bargaining Negotiating Committee responsible for negotiating and monitoring the implementation of an Enterprise Agreement for the Ministry for Culture & the Arts, LISWA Service Division.
- 5.3 This Agreement has been presented to employees of the Ministry for Culture & the Arts, LISWA Service Division, who have endorsed it.

6.—RELATIONSHIP TO PARENT AWARDS

This Agreement shall be read and interpreted wholly in conjunction with the relevant Awards listed in Schedule 1 of this Agreement, which apply to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

7.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

- 7.1 This Agreement shall operate for the period 1 July to 16 November 1997.
- 7.2 The Enterprise Bargaining Negotiating Committee (EBNC) will review this Agreement and commence negotiations for a new Agreement no later than five months prior to its expiration.
- 7.3 The EBNC will assess achievements in performance, productivity and efficiency during the term of this Agreement.
- 7.4 The pay quantum achieved as a result of this Agreement will remain and form the new base pay rate for future Agreements or continue to apply in the absence of a further agreement, except where the Award rate is higher, in which case the Award shall apply.
- 7.5 The Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC.

8.—SALARY INCREASES

- 8.1 The salary increases detailed in this Agreement are payable on the basis of implementation and continued cooperation of those improvements in the productivity and work practice changes outlined in the Productivity Improvement Plan at Schedule 3 and Section 4 of this Agreement.
- 8.2 The following increases will be payable on the award rate during the life of this Agreement as reflected in Schedule 2: Salaries—
 - (a) A flat increase of \$689 from 1 January 1996, or no more than 6 per cent;
 - (b) An increase of 6% from 1 July 1996;
 and a further increase of 1% on the salaries applicable under this Agreement shall be paid on 1 January 1997.

9.—AVAILABILITY OF AGREEMENT

A copy of this Agreement shall be kept in an easily accessible place on each floor of the Alexander Library Building and be available for inspection from Human Resource Services upon request by any employee of the Ministry for Culture & the Arts.

10.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous Industrial Agreements or Award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

11.—AGREEMENT DISPUTE SETTLEMENT PROCEDURE

Any questions, disputes or difficulties arising under this Industrial Agreement, will be dealt with in accordance with the following procedures—

- 11.1 The employee(s) and/or a union representative concerned shall discuss the matter with the Team Leader or Cost Centre Manager and the Manager Human Resources in the first instance. An employee may be accompanied by a union representative.
- 11.2 If the matter is not resolved within 5 working days following the discussion in accordance with subclause (11.1) hereof, the matter shall be referred by the union representative to the Chief Executive Officer or his/her nominee for resolution.
- 11.3 If the matter is not resolved within 5 working days of the union representative's notification of the dispute to the Chief Executive Officer, it may be referred by either party to the Western Australian Industrial Relations Commission.

SECTION 3: TEAM STRUCTURE

In pursuit of the objectives outlined in this Agreement, the parties are committed to the development of a team based structure with a focus on quality client service and continuous improvement processes, which contribute to the achievement of program and organisational objectives.

For employees, this means becoming involved in the implementation of LISWA's operational plan, developing open communication with team leaders and team members, and accepting personal responsibility for their own and their team's performance.

1. TEAM CHARACTERISTICS

An effective team has the following characteristics—

- 1.1 The team is committed to achieving the highest standard of service delivery to clients, be they internal or external.
- 1.2 Staff Focussed
Team members will treat each other with courtesy, consideration and respect, and will strive to practice the following work behaviours—
 - Act with honesty and integrity;
 - Make consultative decisions;
 - Strive to be the best through continuous improvement;
 - Encourage innovation and creativity;
 - Exhibit team pride;
 - Deal with official information responsibly and appropriately;
 - Take personal responsibility for skills development and maintenance.
- 1.3 Good Communication

Communication is open within the team and across teams. Information is shared and decisions can be challenged and explained in a non-threatening environment.

Team Leaders and Cost Centre Managers will take the time to explain decisions to relevant employees.

2.—PRODUCTION OF WORK TEAM PLANS

2.1. Each team shall be organised to achieve clear objectives and outcomes which contribute to the achievement of program objectives and LISWA's client service goals.

2.2 Work teams shall prepare written plans in conjunction with their relevant Cost Centre Manager, the major elements of which shall be the work teams' agreed service outputs. Work team plans shall also document—

- The Performance indicators to be used in measuring work team outputs and achievements;
- The responsibility and accountability required to manage the team resources and monitor and deliver client services;
- Identified changes to work practices;
- Skill development required by team members; and

- Methods for ensuring effective communication both within the work team and with other work teams, and with internal and external clients.

2.3 Team plans will be submitted to and approved by the Chief Executive Officer to ensure consistent standards in performance evaluation and outcomes.

2.4 Work team plans will be formally reviewed and outcomes reported to the relevant Cost Centre Manager.

SECTION 4: PRODUCTIVITY IMPROVEMENTS AND BENEFITS

1.—PRODUCTIVITY INITIATIVES

The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery for LISWA.

The parties agree to develop and implement the following productivity improvements as detailed in Schedule 3—Productivity Improvement Plan.

- Management Restructure and Team Ways of Working
- Project Information Access: Improving services and efficiency through computerisation
- Processing Public Library Stock to Improve Efficiency
- Centralised Purchasing Efficiencies
- Outsourcing Photocopiers
- Provision of Financial Bureau Services to Arts Portfolio
- Computerisation of Consignment Lists
- Selective Repairing of Stock
- Rationalisation of Distribution of New Stock to Public Libraries
- Battye Library Productivity Gains

The outcomes to be achieved during the term of this agreement are—

- Extended Opening Hours of State Reference and Battye Libraries to suit public needs
- The Leonardo Project: Putting interactive multimedia to work for the benefit of clients
- Centre for the Book: Involving the community in books and ideas
- The LISWA Foundation: Raising money from business and the community
- Public Records Search Room: Improving client services
- Reduction in backlogs in cataloguing, indexing and database creation to assist clients find their own materials
- Aboriginal Services Liaison Officer (Public Library Services): Taking public libraries to aboriginal communities
- Government Libraries Consultancy Services: A whole of government approach

2.—PRODUCTIVITY IN EXCESS OF TARGET

During the life of this Agreement, the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. In particular, the parties will analyse any increased productivity resulting from—

- Client focus;
- Fee Based Service Program; and
- Any additional increases realised from Project Information Access.

The parties will assign a value to any improvements realised.

The parties agree that should productivity initiatives listed in this Agreement or added by mutual consent during the term of the Agreement generate savings in excess of the projected value of \$1,805,308 as detailed in Schedule 3: Productivity Improvement Plan, a minimum of 50% of the difference between the projected value and the actual value of the productivity improvements will be reserved for payment of additional benefits to employees which, by agreement of the parties, may be either—

- by payment of lump sum bonuses at the expiration of this Agreement;
- or

- by supplementation of benefits in a subsequent agreement; or
- by some other agreed method.

3.—CONTINUOUS IMPROVEMENT STRATEGY

It is agreed that there will be full support and involvement to the ongoing process of continuous improvement.

This strategy is targeted to support LISWA's mission and objectives.

A fundamental ingredient in the achievement of this strategy is the involvement of all LISWA employees in its development and implementation. The consultative mechanisms and the education process will be critical to this process.

The process of continuous improvement will be progressively implemented within LISWA. The parties agree to promote the involvement of all employees in continuously improving their workplaces and to actively work to remove barriers to its implementation.

In particular, the parties agree to focus on the following issues—

3.1 Customer Focus

- Building customer requirements into the design of new products, services or processes.
- Ensuring that all employees understand that organisational success comes from satisfying internal and external client requirements.
- Improving communication with customers.

3.2 Leadership and Behaviour

All employees—

- Having a shared vision of the future.
- Focusing on achieving the long term aims of the organisation whilst continually satisfying short term requirements.
- Demonstrating ethical and best behaviours by example.
- “Coaching” and not “judging” behaviour.
- Eliminating fear and developing trust among all employees.

3.3 Involvement of People

- Systematically involving all employees through team work.
- Ensuring communication is open, effective and two-way, with clear concise guidance.
- Empowering employees at all levels to be involved in making decisions in their workplace wherever possible.
- Providing employees with necessary training to assist employees to undertake continuous workplace improvement.
- Understanding and acceptance by all employees that everyone is responsible for the quality of their work.

3.4 Acting on Facts and Knowledge

- Making decisions on the basis of accurate information, data and knowledge.
- Developing effective and efficient processes to solve problems and improve quality.
- Ensuring that all employees understand their responsibilities, how to measure their effectiveness and how to target improvement.
- Collecting data that is informative and relevant, so that it can be interpreted correctly.

3.5 Emphasis on Process and Systems

- Participating in cross functional improvement activities.
- Ensuring that the processes are documented, controlled and constantly improved.
- Involving external suppliers as partners in the quality improvement process.

3.6 Emphasis on Continuous Learning

- Treating mistakes and problems as opportunities to learn and improve.

- Standardising gains and communicating improvements to other areas of the organisation that might also learn from them.
- 3.7 Structure for Continuous Improvement
- Developing a framework to enable employees to submit ideas, obtain decisions and receive feedback on their ideas.
 - Develop appropriate organisational structures to support the process of continuous improvement.
 - Recognising and rewarding employees' efforts and achievements through gainsharing and LISWA's recognition scheme.

In addition, LISWA is committed to providing a safe working environment and encouraging the development of creative, innovative, skilled and flexible employees, by way of—

4.—SKILLS DEVELOPMENT AND TRAINING

The parties to this Agreement are committed to supporting the skills development of all employees through continuous learning and the provision of development opportunities. Skills development activities shall have a focus relevant to LISWA's organisational objectives and work team requirements.

To facilitate this, the parties to this Agreement are committed to the implementation of a Skills Development Strategy, before the expiration of this Agreement. It is expected that the Skills Development Strategy will reflect the objectives and aims of this Agreement.

5.—PERFORMANCE MANAGEMENT

The parties to this Agreement are committed to introducing an appropriate performance management system for all employees with the aim of identifying agreed outcomes relevant to individual and team performance, training and development to achieve organisational objectives and appropriate work behaviours.

6.—SAFETY AND WELLNESS

The parties are committed to promoting a workplace where both management and employees take responsibility for occupational health, safety and welfare in work processes and practices.

During 1995, a Risk Management Improvement Plan was established to improve the management of occupational health and safety risks at LISWA. Working parties consisting of management, union and employee representatives, will be responsible for implementing and monitoring agreed initiatives in the Risk Management Improvement Plan.

Cost savings as a direct result of the implementation of safe work practices will be monitored with the view of sharing any cost savings resulting from the implementation of the plan between LISWA and its employees.

7.—CONSULTATION

The parties are committed to working together to improve the business performance and working environment of LISWA. Whilst it is acknowledged by the parties that decisions will continue to be made by LISWA, which is responsible and accountable to Government by statute for the efficient and effective operation of its business, the parties are committed to effective communication and agree, in particular, that—

- 7.1 Where LISWA proposes to make changes likely to affect existing practices, working conditions or employment prospects of employees, the relevant union and the staff affected shall be notified by LISWA as early as possible.
- 7.2 Consultation with employees and the union parties to the agreement on proposed changes to work organisation shall occur prior to final decisions being made.
- 7.3 Employees will be involved in contributing to the efficiency and effectiveness of their work teams within policies and guidelines.
- 7.4 In the context of this clause consultation shall mean information sharing and discussion on matters relevant to the decision making processes which shall be conducted in such a way as to enable the parties to contribute to the decision making process.

8.—PRODUCTIVITY MEASUREMENT

- 8.1 The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of LISWA to management, employees and other relevant stakeholders.
- 8.2 The parties agree to assess organisational performance according to the extent to which the objectives of LISWA are achieved. The parties agree that performance indicators have a primary role to assist in the attainment of corporate goals in the interests of clients, employees, LISWA and the Government on behalf of the community.
- 8.3 The performance indicators in the Productivity Plan have been agreed by the parties and will be used to assess progress in the performance of key elements of the Agreement.
- 8.4 Measurement of LISWA's levels of performance will continue to be undertaken through the use of performance indicators.
- 8.5 It is agreed that the employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.
- 8.6 The parties agree that the value of the initiatives included in this Agreement and assessed through the application of performance indicators is 7 per cent.
- 8.7 Methods will be developed to assign values to future productivity improvements which are identified in LISWA.
- 8.8 The value of the productivity improvements will be shared between LISWA and its employees. The employees' share shall be no less than 50 per cent and the balance shall be retained by LISWA, which shall incorporate the return to Government on behalf of the community.

SECTION 5: CONDITIONS OF EMPLOYMENT

1.—FLEXIBILITY OF WORKING HOURS

Subject to the needs of clients and other employees, Cost Centre Managers and Team Leaders shall have the discretion to allow employees to use credited flexitime hours to be absent from work during the core hours defined in Clause 16 (7)(c)—Hours of the GOSAC Award.

2.—CASUAL EMPLOYMENT

The parties to this Agreement agree to investigate the employment of casual officers within LISWA, and if appropriate converting casual officers to permanent part-time employment.

3.—SPECIAL PERSONAL LEAVE

- 3.1 An employee, other than a casual employee, may use up to five (5) days per annum of accumulated sick leave for such reasons as—
 - Caring for a sick family member or friend;
 - Urgent personal business which requires an absence from work;
 - Personal emergencies; and
 - As a supplement to Short Leave.
- 3.2 Only sick leave accumulated prior to the current year's entitlement may be used for the purposes of this Special Personal Leave.
- 3.3 In making application for Special Personal Leave the employee shall, wherever practicable, give the employer notice of their absence, the reasons for taking such leave and the estimated length of absence.
- 3.4 Special Personal Leave is not available to an employee during periods of other leave.
- 3.5 An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.
- 3.6 Leave taken under this provision is deemed to be sick leave.

4.—PARENTAL LEAVE

4.1 Definition

"Employee" includes full time, part-time, permanent and fixed term contract employees.

“Replacement Employee” is an employee specifically engaged to replace an employee proceeding on parental leave.

“Parental Leave” is unpaid leave.

4.2 Eligibility for Parental Leave

- (a) An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee’s spouse/partner.
- (b) An employee who is employed under a fixed term contract shall not be granted parental leave beyond the period of employment stated in the contract of employment.
- (c) Where the employee applying for the leave is the partner of a pregnant spouse one week leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.
- (d) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.
- (e) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.
- (f) Subject to sub-clause (b) of this clause where both partners are employed by the Ministry for Culture & the Arts the leave shall not be taken concurrently except under special circumstances and with the approval of the Chief Executive Officer.

4.3 Other Leave Entitlements

- (a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.
- (b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Chief Executive Officer’s approval.
- (c) An employee on parental leave is not entitled to paid sick leave and other paid award absences.
- (d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.
- (e) Where a pregnant employee not on parental leave suffers illness related to the employee’s pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

4.4 Notice and Variation

- (a) The employee shall give not less than four weeks notice in writing to the Cost Centre Manager of the date the employee proposes to commence maternity leave stating the period of leave to be taken.
- (b) An employee proceeding on parental leave may elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

4.5 Transfer to Safe Job

- (a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.
- (b) If the transfer to a safe position is not practicable, the employee may take leave for such period as is

certified necessary by a registered medical practitioner.

4.6 Replacement Employee

- (a) Prior to engaging a replacement employee the Cost Centre Manager shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.
- (b) Should an officer apply for leave which is in total more than 12 months, the Chief Executive Officer may advertise and fill the officer’s substantive job on a permanent basis.

4.7 Return to Work

- (a) An employee shall confirm the intention to return to work by notice in writing to the Cost Center Manager not less than four weeks prior to the expiration of the period of parental leave.
- (b) An employee on return from parental leave may be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause 4.5 hereof the employee may be entitled to return to the position occupied immediately prior to the transfer.
- (c) An officer who makes application for leave which will, with parental leave, total more than 12 months, shall be advised in writing before the leave is approved, that the substantive job may be advertised and filled in the employee’s absence.
- (d) An officer whose substantive job has been filled in accordance with (c) of this sub-clause may, on return to duty, be allocated to an alternative substantive position within LISWA at the existing classification and having regard to the employee’s skills, qualifications and abilities.
- (e) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the Part-Time provisions of the relevant award.
- (f) Where the position occupied by the employee no longer exists the employee shall be entitled to the position of the same classification level with duties similar to that of the abolished position.

4.8 Effect of Leave on Employment Contract

(a) Continuous Service

Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant award or this agreement.

(b) Termination of Employment

An employee on parental leave may terminate employment at any time during the period by written notice in accordance with the relevant award.

SECTION 6: EMPLOYEE GRIEVANCE PROCEDURE

When an employee has a grievance, the matter shall be acted on in accordance with the provisions of this clause.

While these grievance procedures are taking place, existing working arrangements shall continue. In order to allow for the peaceful resolution of grievances, the parties shall be committed to avoid stoppages of work, or any other bans or limitations on their performance while the procedures of negotiation and conciliation are being followed.

Where a matter is raised by an employee, a group of employees, or a union representative, the following steps shall be observed—

1. The employee(s) concerned shall discuss the matter with their immediate Team Leader. If the matter cannot be resolved at this level, the Team Leader shall, within three (3) working days, refer the matter to the Cost Centre Manager.
2. The Cost Centre Manager shall take all possible steps to resolve the matter within three (3) working days.

3. If still unresolved, the matter shall be referred to the Manager, Human Resources, and resolved, if possible, within three (3) working days.

The period for resolving a dispute at any stage may be extended by agreement between the parties, if it proves to be impracticable or unreasonable to resolve the matter in the timeframe indicated above.

The employee(s) may nominate to be accompanied by their union representative, or any other person, at any of the stages referred to above.

Should the matter remain in dispute after the above processes have been exhausted, a party may refer the matter to the Western Australian Industrial Relations Commission.

SECTION 7: UNION FACILITIES AND ACCESS

1. LISWA recognises and supports the rights of unions to organise and represent their members. Constructive and consultative industrial relations are important for economic development and increased organisational productivity and rely on cooperation between the industrial partners based on mutual recognition and respect.

2. Role and Responsibilities of Workplace Delegates

As representatives of the union, Workplace Delegates have a legitimate role and function in assisting the union in the tasks of recruiting members, communicating with those members and providing them with relevant union information and services.

Furthermore, there may be issues within the agency that relate to employee grievances. Such issues may also relate directly to the employee/employer relationship and the appropriate involvement of a Workplace Delegate will generally assist in resolving the grievance and thereby contributing to harmonious labour relations with the agency.

A Workplace Delegate also needs to be aware that the primary role of an employee is to fulfil the contract of employment and that union activities undertaken will not unreasonably interfere with work duties.

3. Workplace Delegates—Role in respect to other Authorised Employee Representatives

Where there are agreed procedures designed to deal with specific issues, such as Equal Employment Opportunity and Occupational Health, Safety and Welfare, for which legitimate authorised and trained representatives have been appointed, a Workplace Delegate will refer any such issues arising to the appropriate representatives.

4. The Agency's Role and Responsibilities

LISWA recognises appointed/elected Workplace Delegates and will provide cooperation and support, so that they are able to carry out their role and functions effectively. These functions should relate to the rights and interests of the employees in the workplace.

5. The parties agree to adopt the definition of a workplace, as defined in the Occupational Health, Safety and Welfare Act 1984, as "a place, whether or not in an aircraft, ship, vehicle, building or other structure, where employees work, or are likely to be in the course of their work".

6. Following the election or appointment of a Workplace Delegate, the union will advise LISWA in writing of such election or appointment. The Workplace Delegate will be issued with written credentials by the union authorising them to act as a Workplace Delegate in accordance with the provisions of this clause.

7. LISWA shall also recognise the authorisation of each person so elected/appointed to act in accordance with the duties of a Workplace Delegate. In recognising Workplace Delegates, LISWA acknowledges that they have a significant role to play in the workplace. Such a role includes both rights and responsibilities.

8. LISWA and Workplace Delegates are committed to effective consultation in the workplace, which can improve the working lives of employees and productivity of LISWA.

9. Workplace Delegates shall be protected from any victimisation which may arise out of their need to carry out their duties as a Delegate. LISWA recognises that Workplace Delegates will not be threatened or disadvantaged in any way as a result of their role as Workplace Delegates.

10. Workplace Delegates shall be granted reasonable access to facilities required for the purpose of carrying out their duties. Facilities may include, but not be limited to, access to relevant documents, the reasonable use of photocopiers, filing cabinets, meeting room, telephones and word processing facilities. Such access to facilities shall be negotiated within the Branch and shall not unreasonably be withheld or affect the operation of LISWA.

11. Workplace Delegates shall have the right to display union material at the workplace on a notice board provided by LISWA.

12. On request, Delegates shall be provided with the names and locations of new employees. It is recognised that such information is necessary to permit execution of the duties of Workplace Delegates.

13. The duly authorised official of the union shall on reasonable notification to the employer have access to the workplace during working hours, including meal breaks, for the purpose of discussing with employees covered by this Agreement, the legitimate business of the union, or for the purpose of investigating complaints concerning the application of this Agreement, but shall in no way interfere with the work of employees.

14. Any dispute concerning the interpretation of this clause should be resolved within LISWA, where possible, however, this does not preclude either party from seeking advice in order to resolve the dispute at any stage in the process.

SECTION 8: SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories

Signed for and on behalf of the Ministry for Culture & the Arts by—

.....Signed.....

Dr W J Cox
Acting Director General

Date: 2/7/97

Signed for and on behalf of the Community and Public Sector Union/Civil Service Association Western Australian Branch by—

.....Signed.....

Dave Robinson
Branch Secretary

Date: 20/6/97

Signed for and on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, WA Branch

.....Signed.....

Helen Creed
State Secretary

Date: 30/6/97

Signed for and on behalf of the Shop Distributive and Allied Employees' Association of Western Australia

.....Signed.....

Joseph Bullock
General Secretary

Date: 29/6/97

Signed for and on behalf of the Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch

.....Signed.....

Jim McGiveron
Branch Secretary

Date: 27/6/97

SCHEDULE 1

RELEVANT AWARDS TO THIS AGREEMENT

- Public Service Award 1992. Union respondent is the Civil Service Association of Western Australia (CSA).
- Western Australian Public Sector (Civil Service Association) Enterprise Bargaining Framework Agreement 1995.
- Cultural Centre Award 1987. Union respondent is the Australian Liquor, Hospitality and Miscellaneous Workers' Union (ALHMWU).
- Miscellaneous Government Conditions and Allowances Award 1992. This Award is to be read in conjunction with the Cultural Centre Award.

5. Transport Workers' (Government) Award 1952. Union respondent is Transport Workers' Union (TWU).

6. Storemen (Government) Consolidated Award 1979. Union respondent is Shop Distributive and Allied Employees Association (SDA).

SCHEDULE 2

SALARIES

Award	1/1/96 + \$689 flat rate/ for 6 mths/ or 6%	1/7/96 6%	1/1/97 6% + 1%
<u>Public Service Award</u>			
Under 17 years	10,873.00	11,525.38	11,640.63
17 years	12,707.00	13,469.42	13,604.11
18 years	14,822.00	15,711.32	15,868.43
19 years	17,157.00	18,186.42	18,368.28
20 years	19,267.00	20,423.02	20,627.25
21 years or 1st year of adult service	21,165.00	22,434.90	22,659.25
22 years or 2nd year of adult service	21,817.00	23,126.02	23,357.28
23 years or 3rd year of adult service	22,468.00	23,816.08	24,054.24
24 years or 4th year of adult service	23,115.00	24,493.00	24,746.92
25 years or 5th year of adult service	23,766.00	25,144.00	25,443.88
26 years or 6th year of adult service	24,417.00	25,795.00	26,140.84
27 years or 7th year of adult service	25,166.00	26,544.00	26,942.72
28 years or 8th year of adult service	25,684.00	27,062.00	27,497.29
29 years or 9th year of adult service	26,450.00	27,828.00	28,317.37
<u>Level 2</u>			
1st year	27,367.00	28,745.00	29,299.11
2nd year	28,070.00	29,448.00	30,051.74
3rd year	28,809.00	30,187.00	30,842.92
4th year	29,590.00	30,968.00	31,679.05
5th year	30,407.00	31,785.00	32,553.73
Award	1/1/96 + \$689 flat rate/ 6 mths	1/7/96 +6%	1/1/97 6% + 1%
<u>Level 3</u>			
1st year	31,530.00	32,908.00	33,756.02
2nd year	32,405.00	33,783.00	34,692.79
3rd year	33,307.00	34,685.00	35,658.47
4th year	34,233.00	35,611.00	36,649.85
<u>Level 2/4 Librarians</u>			
1st year	27,367.00	28,745.00	29,299.11
2nd year	28,809.00	30,187.00	30,842.92
3rd year	30,407.00	31,785.00	32,553.73
4th year	32,405.00	33,783.00	34,692.79
5th year	35,503.00	36,881.00	38,009.51
6th year	37,522.00	38,900.00	40,171.05
<u>Level 4</u>			
1st year	35,503.00	36,881.00	37,633.18
2nd year	36,498.00	37,876.00	38,687.88
3rd year	37,522.00	38,900.00	39,773.32
<u>Level 5</u>			
1st year	39,494.00	40,872.00	41,863.64
2nd year	40,827.00	42,205.00	43,276.62
3rd year	42,212.00	43,590.00	44,744.72
4th year	43,649.00	45,027.00	46,267.94
<u>Level 6</u>			
1st year	45,960.00	47,338.00	48,717.60
2nd year	47,531.00	48,909.00	50,382.86
3rd year	49,157.00	50,535.00	52,106.42
4th year	50,893.00	52,271.00	53,946.58
<u>Level 7</u>			
1st year	53,555.00	54,933.00	56,768.30
2nd year	55,397.00	56,775.00	58,720.82
3rd year	57,401.00	58,779.00	60,845.06
<u>Level 8</u>			
1st year	60,658.00	62,036.00	64,297.48
2nd year	62,991.00	64,369.00	66,770.46
3rd year	65,884.00	67,262.00	69,837.04

Award	1/1/96 + \$689 flat rate/ 6 mths	1/7/96 +6%	1/1/97 6% + 1%
<u>Level 9</u>			
1st year	69,497.00	70,875.00	73,666.82
2nd year	71,938.00	73,316.00	76,254.28
3rd year	74,722.00	76,100.00	79,205.32
Class 1	78,932.00	80,310.00	83,667.92
Class 2	83,142.00	84,520.00	88,130.52
Class 3	87,350.00	88,728.00	92,591.00
Class 4	91,560.00	92,938.00	97,053.60
Award	1/1/96 + \$26.41 Flat increase	1/7/96 6%	1/1/97 6% + 1%
<u>Transport Workers (Government) Award</u>			
Group 2	413.90	438.73	443.12
After 1 yr service	417.60	442.66	447.08
After 2 yrs service	421.20	446.47	450.94
<u>Cultural Centre Award</u>			
Security officer			
1st year of employment	410.30	434.92	439.27
2nd year of employment	418.70	443.82	448.26
3rd year of employment and thereafter	427.10	452.73	457.26
Award plus \$12.00 pw	1/1/96 + \$26.41 pw Flat increase	1/7/96 +6%	1/1/97 6% + 1%
<u>Storeman (Government Consolidated) Award</u>			
<u>Storeperson</u>			
<u>Level 4</u>			
Grade 1 430.00 pw	442.00	468.41	473.09
Grade 2 440.00 pw	452.00	478.41	483.19
Grade 3 450.00 pw	462.00	488.41	493.29
<u>Storeperson</u>			
<u>Level 3</u>			
Grade 1 411.00 pw	423.00	448.38	452.86
Grade 2 417.00 pw	429.00	454.74	459.29
Grade 3 423.00 pw	435.00	461.10	465.71
<u>Storeperson</u>			
<u>Level 2</u>			
Grade 1 398.50 pw	410.50	435.13	439.48
Grade 2 404.50 pw	416.50	441.49	445.90
Grade 3 410.80 pw	422.80	448.17	452.65
<u>Storeperson</u>			
<u>Level 1</u>			
Grade 1 388.00 pw	400.00	424.00	428.24
Grade 2 393.00 pw	405.00	429.30	433.59
Grade 3 398.00 pw	410.00	434.60	438.95
Under 16 years of age	166.90 pw	178.90	189.63
16 to 17 years of age	205.20 pw	217.20	230.23
17 to 18 years of age	240.50 pw	252.50	267.65
18 to 19 years of age	298.40 pw	310.40	329.02
19 to 20 years of age	321.70 pw	333.70	353.72
At 20 years of age	357.00 pw	369.00	391.14

SCHEDULE 3

PRODUCTIVITY IMPROVEMENT PLAN

The following sections illustrate the major productivity initiatives undertaken by Board staff during 1995 which will realise their major impact during the term of the Enterprise Bargaining Agreement. These are included in the Enterprise Bargaining Agreement as Schedule 3—Productivity Improvement Plan. In addition, staff have identified further changes in work practices which will result in a significant contribution to the continued success of the organisation. Under the terms of both the EBA and the Workplace Agreement staff are required to realize the benefits identified through changes in work practices, especially working as members of teams. Indeed, staff have committed already to working in teams by participating in workshops to design structures and outcomes.

LIBRARY BOARD OF WESTERN AUSTRALIA
PROPOSED ENTERPRISE AND WORKPLACE
AGREEMENTS TO COMMENCE 1.1.1996

PRODUCTIVITY COMPONENTS

SUMMARY SHOWING HOW VALUE GENERATED
FROM INCREASED PRODUCTIVITY DURING THE
PERIOD OF THE AGREEMENT WILL BE USED TO
PROVIDE NEW AND IMPROVED SERVICES TO THE
PUBLIC

VG VALUE GENERATED FROM PRODUCTIVITY IMPROVEMENT	Value 18 months	VB	Value Applied to NEW SERVICES	Cost 18 Months
1. Management restructure	\$771,951		Team ways of Working (see VG1)	\$771,951
2. Project Information Access	\$600,000	1.	Extending library opening hours	\$397,565
3. Processing Public Library stock	\$88,620	2.	The Leonardo Project	\$110,151
4. Centralised purchasing efficiencies	\$78,849	3.	Centre for the Book	\$102,090
5. Outsourcing photocopier #	\$32,930	4.	The LISWA Foundation	\$37,995
6. Bureau services for Arts Portfolio	\$82,425	5.	Public Records Search Room	\$25,545
7. Computerising consignment lists	\$25,545	6.	Reduction in cataloguing backlogs	\$37,995
8. Selective repairing of stock	\$48,998	7.	Aboriginal Services Liaison Officer	\$37,995
9. Rationalisation of stock distribution	\$37,995	8.	Government Libraries Consultant	\$85,476
10. Battye Library productivity gains	\$37,995			
	\$1,805,308			\$1,606,763

Notes—

Further details of the values and costs are provided in other documentation. For a conservative estimate the item marked # has been assumed not to start realising value until 1.7.96.

The difference of \$198,545 between value generated and value applied in the above table goes towards the salary increase for staff.

During the 18 month period of the agreement the Board needs to provide \$545,145 in cash for salary increases and \$397,565 for extending the opening hours. This can be accommodated within the existing forward estimates.

VG1. MANAGEMENT RESTRUCTURE AND TEAM
WAYS OF WORKING

Management Restructuring

In 1994 extensive consultation and research with management and staff resulted in a document: *Reinventing the Organisation*. The plan outlined a change program which will position the organisation "to deliver best practice information services to the people of Western Australia as we move towards the Year 2000." *The Change Agenda* was the first stage in the change programme and this was completed in November 1995. This first phase resulted in the restructuring of the organisation's senior management. Prior to this, there existed a hierarchical structure with a total of 27 management positions, including the CEO (refer Attachment 1).

In 1995 most positions were abolished and a flat organisation structure was introduced. This comprises 15 positions including the CEO (refer Attachment 2). The major thrust of the restructure was the elimination of the hierarchical management structure, a focus on client service delivery and continuous improvement.

The management restructuring was completed in November 1995 and represents a reallocation of \$771,951 over the life of the agreement as 12 management positions have been converted to service delivery positions (refer Attachment 3).

Team Ways of Working

The next phase of the change agenda is the development of teams and new ways of working. The EBA seeks a commitment to work in teams, with employees taking responsibility for team outcomes, and exhibiting behaviours appropriate to team ways of working.

Teams will be implemented on 1 January 1996 and will be both functional and process oriented, depending on the work practices and requirements of the cost centres. The fundamental change in work practices will mean that team leaders will co-ordinate the activities of teams (rather than manage), and all team members will be responsible and accountable for the team's outputs and outcomes. These outcomes will be focussed on client services (both internal and external) and increased efficiency and cross-organisational and cross-Portfolio co-operation.

This process will not be easy. It requires a commitment from staff to accept responsibility for team outcomes. As can be seen from the staff profile at Attachment 4, 150 FTE are Level 1 and 2 employees. This factor, together with a relatively conservative organisation culture, will mean that funds, resources and management commitment is required to be generated for training, development, learning and support for all staff.

Costs—

The initial costs to LISWA were the research, development and consultation to provide the rationale and justification for *Reinventing the Organisation*. There has been a considerable psychological cost associated with the restructuring in terms of change and uncertainty, fear of losing jobs, and displaced employees. While a dollar figure cannot be attached to these consequences, nevertheless they are a cost and have meant that processes such as more frequent communication with staff have been introduced to try and offset the psychological cost to employees. It should be noted that this restructure was effected at the same time as the definition, selection and first phase implementation of the new computerised system, *Project Information Access* (see section VG2 of this document)

Value

Reduction of 12 FTEs in senior management without a transfer of management responsibilities elsewhere. Represents \$771,951 over 18 months.

VG2. PROJECT INFORMATION ACCESS : IMPROVING
SERVICES AND EFFICIENCY THROUGH COMPUTERI-
SATION

Project Information Access (PIA) is a significant achievement and was launched by the Minister for the Arts in September 1995. PIA is an extensive replacement and upgrading of online services to the public, including graphical interfaces to the catalogues using Internet, the 'information superhighway'. These are platforms on which will be based multimedia and government information services. During the period 1995-1997, further information and services will be added to PIA to bring together the Board's wealth of information resources with those in the State's public libraries and records collections. It will provide a link to other information systems both within Australia and overseas. As a consequence, more extensive services will be provided to the people of Western Australia to satisfy their various information needs.

The project involves a \$3.6 million overhaul of information technology, the conversion of existing database and operations to a new, faster system, and the opportunity to provide access to information resources not previously possible. This \$3.6 million comprises a capital works allocation of \$2.4 million over three years and a \$1.2 million contribution from recurrent expenditure. In presenting the budget case for capital works funding, the organisation agreed that if \$2.4 million was allocated for hardware and software purchases then the Board would reallocate \$400,000 each year from its recurrent budget as a productivity savings commitment. In the first year the Board met this commitment and we are now four months into the second year and on target. This cash has been used and will continue to be needed for analysis, development, maintenance, cabling and other costs associated with the project.

The planning, installation and implementation of the new system has been carried out within existing staff resources. Staff have contributed thousands of hours of time tendering for and selecting the system and, in preparing data and implementing the system which is in the second year of a three year implementation period. The ongoing commitment of the staff to the project is crucial to its success as the project affects almost every area of the organisation and has a major impact on our clients.

During the implementation of Project Information Access, existing inputs are being held constant while delivering massive project outputs in addition to continuing to deliver all the public services delivered in the past.

While living within existing budgets and expecting to live within forward estimates, various techniques are being used to achieve these increased outputs. These are outlined below.

- More than twelve Project work teams have been, or will be, set up to address issues to do with Searching, Interfacing, Cataloguing, Acquisitions,

Exchanges, the Public Library Interface, Circulation, Serials, Indexes, Community Information and Document Delivery. The work of some of these teams is well advanced but others are just gearing up and will have substantial outputs to achieve during the period of this agreement. The teams are generally 5 to 8 members with more than 50 staff members involved in one or more teams.

- Most of the staff in the work teams are below Level 6 and work additional hours or at week ends for no additional pay. For example, the Level 5 leader of the search team prepared evaluation reports in her own time at home and, in addition, did her own normal supervisory job as well as acting in another position in order to release a colleague to work on the project full time. Staff commitment and enthusiasm is high and worthy of reward as we need it to continue.
- A Level 5 staff member from the State Reference Library has been seconded to work full time on the project as a Co-ordinator. The State Reference Library has carried this cut in resources during this secondment. Other staff worked additional shifts on the reference desk to maintain the service to clients. Similar situations exist for two Level 2/4 Librarians (one from Battye and one from State Reference Library) who are handling the training for the new system across the organisation in addition to their normal duties.
- Work priorities have been re-assessed and hard decisions are being taken to cease doing some work which is considered to represent inadequate return for effort in relation to the benefits to be gained by implementing PIA. Many areas are deliberately taking the time to re-engineer their processes so as to maximise the returns on the new software for productivity and service improvement.
- As a prelude to the transfer of data to the new system, old data bases were purged of outdated records thereby making the searching process quicker and improving productivity even before the transfer and making the catalogues easier for the public to use.

The commitment of staff to this project enabled the entire selection process for the new system to be conducted in a manner which has been praised by the State Supply Commission without the need for expense of consultants who, for a project like this, would have added well in excess of \$100,000 to costs. (A Project Manager employed on contract from recurrent funds for three months cost \$30,000.)

Generally, throughout the agency, staff who were already achieving a level of work output which fully justified their continued employment, have put themselves out to perform well beyond normal expectations because the benefits, for clients and staff, expected from implementing a system which represents a quantum leap in access to information, has provided a high level of motivation. This needs to continue as the feedback from the public and similar organisations has been very positive.

Benefit to Clients—

Information and services are accessible by local, national and international communities via Internet. The facilities currently provided will be updated progressively into the future to continue to meet world standards for technological innovation and will be augmented by sophisticated interactive multi media interfaces that are considered to be state-of-the art technology world wide.

Value

\$400,000 recurrent expenditure per annum applied to other than capital costs

ie; \$600,000 during the period of the agreement.

VG3. PROCESSING PUBLIC LIBRARY STOCK TO IMPROVE EFFICIENCY

Objective—

To reduce the cost of shelf-ready library materials for public libraries throughout Western Australia by reassessing the need for labels and catalogue cards.

The public libraries throughout Western Australia are serviced by the Board through the provision of library materials including books on a continuous basis. Staff have identified changes in work practices that will reduce the processes needed to provide labels and catalogue cards for the new books.

Benefits to Clients—

Maintaining existing standards of library stock for use by the public libraries at a reduced cost to the Board.

Performance Indicators—

Decrease of 1 FTE (Level 1) in the processing team. (equivalent salary \$25,330 per annum)

Stationery costs for processing 450,000 books will be reduced by 7.5 cents per book. (\$33,750 per annum)

Unit cost of preparing items for use: 1994/1995 \$0.94

Savings—

Savings in cost of stationery on 450,000 books to automated libraries: \$33,750

Equivalent of 1 FTE (Level 1 average salary): \$25,330

Total value during the period of this agreement: \$88,620

Allocation of benefit

Cash savings to pay for increase in salaries. FTE savings to cataloguing and indexing projects which will reduce the backlog of West Australian materials awaiting description and addition to the database. Staff resources will also be applied to other indexing and conversion projects to ensure clients have better and more complete access to collections in the computerised catalogues, thus providing further productivity benefits as clients can search for their own materials. See productivity initiative VA6: Reduction in backlogs in cataloguing, indexing and database creation.

VG4. CENTRALISED PURCHASING EFFICIENCIES

Objective—

To reduce the cost of purchasing goods and services through the implementation of a centralised purchasing function. The employment of a Supply Officer dedicated to the purchasing function will enable improved prices for goods and services and the release of FTE time in service delivery areas. The Supply Officer was employed in the Finance and Building Services section in October 1995 within the existing FTE allocation for 1995/1996.

Benefits to Clients—

More efficient use of resources by purchasing goods and services at reduced cost. Estimated 0.2 FTE (Level 1) net saving across all service delivery and support areas freed to concentrate on client services. Greater compliance with State Government policy and procedures and accountability for adherence to State Supply Commission policies.

Performance Indicators—

Examples of savings already made by using centralised purchasing—

Tape copier:	8% saving
Microphones:	55% saving
Book Pockets	27% saving

In 1994/5 approximately \$950,000 was spent for purchasing goods and services (excluding information technology and library materials). It is estimated that a 5% decrease in the cost of purchasing goods and services is a conservative valuation of savings in the life of this agreement.

Value—

Estimated 5% saving on budget for 1995/1996—\$47,500 per annum

Estimated 0.2 FTE net saving (Level 1) \$5,066

Total value during the period of the agreement: \$78,849

Allocation of benefit

Cash savings to pay for increase in salaries. The 0.2 FTE will be allocated to the work of supporting the LISWA Foundation to raise funds for the organisation. See productivity initiative VA4.

VG5. OUTSOURCING PHOTOCOPIERS

Objective—

To improve the quality, reliability and range of photocopying services to clients and staff within the Alexander

Library Building by contracting out the service. This will free FTEs in a number of service delivery and finance areas for other duties.

The Board provides 15 photocopy machines for use by the public and 35 for the staff. These machines are outdated and ageing, thus requiring considerable maintenance from internal staff and external maintenance providers.

The photocopy machines are coin operated, and staff from Finance and Building Services collect and process the monies daily.

The Business Manager is investigating the contracting out of the photocopy machine services. This will become effective before June 1996.

Benefits to Clients—

The quality, reliability and range of photocopying services is improved and staff currently involved in maintaining the copiers and handling monies will be released for providing other client services.

Performance Indicators—

Equivalent of 0.8 (Level 1) FTE in the State Reference Library and Battye Library released from servicing photocopiers and made available for service delivery.

Equivalent 0.5 FTE (Level 1) in Finance and Building Services released from servicing change machines and photocopiers for other duties.

Value—

Equivalent 1.3 FTE savings = \$32,930 per annum and during the life of this agreement.

Allocation of Benefit

The 0.8 FTE will be allocated to productivity initiative VA4 which will provide support to the new Foundation in raising funds for the organisation.

VG6. PROVISION OF FINANCIAL BUREAU SERVICES TO ARTS PORTFOLIO

Objective—

To make efficiency savings through the provision of financial services, payroll and human resource functions in the Arts Portfolio through a bureau located at the Board's premises.

A new unit will be established called Portfolio Bureau Services which will provide integrated financial, payroll and human resource services to the Arts Portfolio. Information technology services will be reviewed in 1996 to determine the appropriate mix of services and support. The position Manager: Bureau Services is in the process of being advertised and will be filled by December 1995. The staffing for the Bureau Service will be drawn from finance and human resource areas throughout the Arts Portfolio, enabling FTE savings to be made by all agencies in the Arts Portfolio.

Benefits to Clients—

Cost savings in providing financial services, payroll and human resource administrative functions to all agencies in the Arts Portfolio and the Board's share of these savings being allocated to service delivery functions.

Performance Indicators—

Estimated savings to all agencies were calculated by consultants Ernst & Young to exceed \$100,000 per annum. (This report is available for perusal). The Board, as a client of the Bureau, with approximately 50% of the bureau activity, should make savings exceeding \$50,000 per annum in the provision of financial services. Meetings of the HR Managers in the Arts Portfolio in November 1995 have identified agreed areas for HR Bureau Services, including Clockwork in the first half of 1996, and training administration at a later stage of development of the Bureau Services.

No calculations have been done as yet on IT savings.

[Note: There is an initial investment in computer equipment which the Board will fund from its Capital Works Provision for equipment for 1995/1996, thereby acquiring assets. The operational costs of these assets will be charged against the Bureau, and this has been taken into account before arriving at the estimated savings.]

Value—

Estimated \$50,000 per annum for financial services by reducing the FTE allocation for 1995/6 and subsequent years. FTE savings of 1 Level 1 FTE.

0.5 FTE (Level 2) saving in Human Resource Services: \$14,950.

Total value during the period of this agreement: \$82,425.

Allocation of Benefit—

The 0.5 FTE (Level 2) will be allocated to productivity initiative VA3 to enable the Centre for the Book project to proceed.

The 1 FTE will be allocated to productivity initiative VA2 to enable the Leonardo project to proceed.

VG7 COMPUTERISATION OF CONSIGNMENT LISTS

Objective—

To reduce the time taken by Public Records Office staff to record and list consignments of archival records transferred from government agencies to the Public Records Office for permanent storage and use by the public.

In order to keep pace with or improve the speed with which we receive government archival records into custody, it was clear to staff that they would need to alter the way they worked. Technology was seen as part of the answer and changed practices as the other. In 1995/96 it is expected that 0.8 FTE less will be needed to process expected demand.

Benefits to Clients—

Improved access to public records by government agencies and the public using the Archives Search Room, through speedier completion of documentation.

Performance Indicators—

98.5% in time and cost for consignments listed on disc.

Estimated 150 consignments submitted on disc during the period of this agreement.

Average time to input details of one consignment manually is 16 hours. This means 2400 hours for 150 and this cost = \$25,950

Time to input information via disc: 0.25 hours. The cost for 150 = \$405.

Value—

\$25,545 during the period of the agreement. Equivalent to 0.7 FTE Level 1

Allocation of Benefit—

This 0.8 FTE will be applied to improving the speed with which records are delivered to researchers in the Search Room.

VG8 SELECTIVE REPAIRING OF STOCK

Objective—

To reduce the costs by repairing and binding only those resources (books) which are selected by public librarians as part of the used component of their exchanges.

One of the services of the Public Library Service section is to repair and bind books returned to it by public libraries throughout Western Australia. This amounts to thousands of books that are repaired and rebound each year and held on shelves prior to being selected for public library use, as public libraries have an allocation of new and used books each month. A team of employees in PLS has responsibility for repairing and binding books and the books take up a large amount of shelving space in the PLS area.

At a workshop on developing productivity initiatives the binding team reviewed their work practices and determined that it would be more cost effective to repair and rebind only those books that had already been selected by public librarians. This meant that those books that are not popular with readers are not repaired and are sent to the Discarded Books Sale.

Benefits to Clients—

The clients are the public libraries throughout Western Australia. Books which are popular are repaired more quickly and returned to circulation. Resources and

materials are not used in repairing books which are not required by public libraries.

The backlog of repairs has been cleared and there are no further backlogs, ensuring the full range of used library materials are available for selection to refresh public library stocks.

Performance Indicators—

Cost of repairing library materials is reduced by 20%.

Material requested for repair by public librarians is available for the next exchange (one month turnover rate) providing greater efficiency in the turnover of books between public libraries. Only those books that require repairing are repaired. Those books that are not popular are not repaired.

Value—

\$20,000 per annum for materials and 0.5 of an FTE.

Total value during period of this agreement: \$48,998.

Allocation of benefit

This 0.5 (Level 1) will be allocated to processing of stationery for exchanges for libraries with no computers. This is needed as part of the transfer of work from one section to another but results in overall benefits to the clients. Cash used for payment of salary increase.

VG9 RATIONALISATION OF DISTRIBUTION OF NEW STOCK TO PUBLIC LIBRARIES

Objective—

To increase efficiency by reducing the amount of handling of new stock sent to large public libraries throughout Western Australia. This will be achieved by removing a number of steps in the exchanges process.

In a workshop on developing productivity initiatives, the workers in this area reviewed their current work practices in the handling of new stock. By brainstorming a number of ideas, the staff in this area were able to suggest ways in which their work practices could be changed.

Benefits to Clients—

The new component of exchanges sent to public libraries will be delivered in a more timely manner, therefore making this stock available to members of the public more quickly.

Staff are released from counting and moving stock into more productive activities.

Stock control will be improved.

Performance Indicators—

The number of times an item is handled will be reduced from 6 times to 2, for 70% of all new books sent on exchanges.

Number of new materials supplied to public libraries 1994/1995: 334,581

This will be compared to the figures for 1995/1996 and ongoing to estimate the productivity savings generated through changed work practices.

Value—

Equivalent 1 FTE Level 1 = \$25,330 per annum

Total during the period of this agreement \$37,995.

Allocation of benefit—

This 1 FTE will enable the creation of an Aboriginal liaison officer. See Productivity Initiative VA7.

VG10 BATTYE LIBRARY PRODUCTIVITY GAINS.

Objective—

To improve processing and production of information support materials.

Benefits to Clients—

The reorganisation of binding programs has resulted in an improvement in procedures to release staff for other duties.

The extensive rewriting of brochures and the planned upgrading of other information materials will reduce the amount of time staff spend helping clients to locate materials.

Newspaper services have been reorganised and the continued improvement here will result in staff also spending less time with clients in these areas.

Performance Indicators—

These activities will ensure that 1FTE (Level 1) will be able to be released to focus on the backlog of indexing and adding material to the computer systems. There are considerable backlogs.

Value—

1FTE (Level 1) will be transferred to productivity initiative VA6, reduction in backlogs in cataloguing, indexing and database creation.

Total during the period of this agreement: \$37,995.

VA1. EXTENDING OPENING HOURS OF STATE REFERENCE LIBRARY AND BATTYE LIBRARY TO SUIT PUBLIC NEEDS

Objective—

The Board and the Minister for the Arts seek to improve services by opening the Alexander Library Building at times convenient to the public.

The current opening hours are —

Monday	9.00am to 5.30 pm
Tuesday to Thursday	9.00 am to 9.45 pm
Friday	9.00 am to 5.30 pm
Saturday and Sunday	2.00 pm to 5.30 pm

As from 1 January 1996 the following times will apply—

Monday to Thursday	9.00 am to 9.45 pm
Friday	9.00 am to 5.30 pm
Saturday and Sunday	10.00 am to 5.30 pm

This amounts to an extra 12 hours per week. This service will be provided within the existing forward estimates.

Benefit to Clients—

Availability of services on Monday evenings, and all day Saturday and Sunday.

Performance Indicators—

15 hours per week will be funded within forward estimates as a result of savings made elsewhere in the organisation and explained in this document. This includes the shift penalty of \$11.70 per evening shift and the weekend shift allowance of an additional 0.5 of normal salary for all hours worked.

Cost—

Monday evening—	5 hours	5 Level 2/4	\$24,388
		10 Level 1	\$36,748
Saturday/Sunday	10 hours	7 Level 2/4	\$87,776
		13 Level 1	\$116,131
TOTAL COST per annum			\$265,043
TOTAL COST during the period of Agreement			\$397,565

VA2. THE LEONARDO PROJECT: PUTTING INTERACTIVE MULTIMEDIA TO WORK FOR THE BENEFIT OF CLIENTS

Leonardo is the name given to a partnership between LISWA and other cultural and academic institutions aimed at providing greater public access to cultural material through networked, interactive multimedia. The Leonardo Project will commence in 1996 and continue into the future. The information collection and dissemination is a dynamic medium and has no foreseeable conclusion as it is a new way of delivering core services.

As a complement to Project Information Access, access to collections will be made available through the systematic and continuous availability of Western Australian materials and collections on the Internet. For example, a person anywhere in the world would not only have access via the Internet to the history of Western Australian art but would be able to view specific paintings. This project is seen by the Arts Portfolio CEOs and the Minister for the Arts as a most significant and relevant project.

This will enable people to experience the words, sounds and images contained in the unique collections of the JS Battye

Library of West Australian History, the Public Records Office and the State Reference Library. Further, through partnerships formed within the Arts Portfolio, information from the Western Australian Museum and the Art Gallery collections will become available to the local, national and international community.

Costs—

The Leonardo Project will commence early in 1996 and the Board is funding the initial development of the Leonardo project from forward estimates. Staff will be involved with planning, selecting and organising materials for inclusion, digitising material, providing the text to accompany the images and providing better access to the collections through catalogues and indexes.

Value—

Staffing levels will be augmented by the transfer of 1FTE (Level 1) from productivity initiative VG6. This is a transfer of resources from Finance and Building Services as a result of the establishment of the Arts Portfolio Bureau Service.

VA3. CENTRE FOR THE BOOK: INVOLVING THE COMMUNITY IN BOOKS AND IDEAS

The Centre for the Book will promote the importance and value of the book, in all of its forms, as a central part of the cultural, scholarly, scientific and commercial life of Western Australia. While inspired by similar organisations in the British Library and the Library of Congress, the Western Australian concept is unique.

In August 1995 a proposal was developed and approved by the Board to develop a Centre for the Book in the Alexander Library Building. The Centre for the Book will promote the work of writers and the development of ideas, will provide a central accessible space where information about books and writing can be shared and valued, and will support a range of book related activities for adults and children. Publications and merchandising will also be explored as ways to generate income to continue to fund the Centre for the Book. In essence, the Centre will become a focus for public programs and the raising of financial support from the community.

Costs—

Initial funding for the Centre for the Book will be available to LISWA through debt recovery from the Perth City Council, and will therefore be within existing forward estimates. A Manager for the Centre for the Book will be appointed early in 1996. Corporate support and funding will be explored through residencies, exhibitions, new technologies, seminars, festivals and special events. Partnerships with organisations across government and the community have the potential for generating additional resources.

Value—

Apart from the position of Manager for the Centre for the Book, staffing for the Centre for the Book will be from the existing FTE allocation. This will be achieved through the transfer of the 0.5 FTE (Level 1) gained through productivity initiative VG5 which transfers savings from Finance and Building Services and 0.5 FTE (Level 2) gained through productivity initiative VG6 which transfers savings from Human resources as a result of the establishment of the Arts Portfolio Bureau Service.

VB4 THE LISWA FOUNDATION: RAISING MONEY FROM BUSINESS AND THE COMMUNITY

Objective—

To raise funds from the community to support the activities of the Board and the Library and Information Service of Western Australia (LISWA), the operating arm of the Board.

The body is to be known as The LISWA Foundation.

Benefits to Clients—

The Board has no funds other than those allocated on an ongoing basis from CRF. To gain sponsorship, bequests and other funds from business and the community, it has been our experience that we need to allocate a resource to do this work. To date (with our previous Westralian Library Foundation) it has been unproductive for staff and

members of the community to try to do this work in their spare time.

The resources raised will go to the preservation of and addition to the collections and other activities of LISWA.

Performance Indicators—

The goal is to have this position funded by the Foundation within the life of the Agreement and to have sufficient funds in hand for the Foundation to be considered a viable proposition by its existing Patron and the new Vice-Patrons he will recruit.

Value—

1FTE (Level 1). Value: \$37,995 during the period of the agreement.

This position will be more likely to be a contract part time position and be increased as resources from the Foundation allow.

This FTE is allocated from productivity initiatives VG4 Centralised purchasing and VG5 Outsourcing Photocopiers.

VB5 PUBLIC RECORDS SEARCH ROOM: IMPROVING CLIENT SERVICES

Objective—

To provide improvement in the time taken to deliver materials to researchers in the Public Records Office Search Room.

Benefits to Clients—

The shorter the time between request and delivery of material means less waiting for the client, more control over materials and a better turnover of materials for a larger number of clients.

Performance Indicators—

The reduction in waiting time for clients and the reduction in requests awaiting processing.

Value—

0.8 FTE (Level 1) \$25,545. This has been transferred from productivity initiative VG7, Computerisation of Consignment Lists.

VB6 REDUCTION IN BACKLOGS IN CATALOGUING, INDEXING AND DATABASE CREATION TO ASSIST CLIENTS FIND THEIR OWN MATERIALS

Objective—

To provide the full benefits of new computer systems it is essential that as much data be provided as possible. In this way clients can perform their own searches and thus save time for themselves and staff. The more clients can perform their own enquiries the more staff are freed for helping others and so the continuous improvement cycle can begin.

Benefits to Clients—

Currently, clients must visit the Alexander Library Building to search for and use material in collections like the Battye Library. The more material that can be placed on computers then the easier it is for visitors to find their own material.

In addition, there are large numbers of potential clients who could be serviced electronically were the indexes, databases and catalogues available on the Internet.

This project utilises savings in FTE's from productivity initiatives to do this work.

The Board has a legislative responsibility for WA's documentary heritage and this has led to the creation of a series of card indexes developed over many years. With the new computer systems, great efficiencies could be achieved if this material could be transferred to either the computer or microfilm. There are 95,000 cards awaiting conversion and this represents a significant benefit to clients in not only saving their time through looking for information in one place but also saving staff time as clients move to self help.

Performance Indicators—

Elimination or major reduction in backlogs in Western Australian materials. Card indexes can be changed to computers and material in the closed stack areas made more available to clients.

Value—

1.0 FTE from productivity initiative VG3 Processing of public library stock.

1.0 FTE from productivity initiatives VG10 Battye Library Productivity Gains.

VA7 ABORIGINAL SERVICES LIAISON OFFICER (PUBLIC LIBRARY SERVICES): TAKING PUBLIC LIBRARIES TO ABORIGINAL COMMUNITIES

Objective—

To develop appropriate resources and services to meet the needs of Aboriginal people.

Benefits to Clients—

In 1995 the Board completed an Aboriginal and Torres Strait Islander Services Delivery Plan. This is for the purpose of delivering public library services. An Aboriginal person would be employed to assist in the implementation of this plan for which a Customer Service Council will be established in December 1995.

Performance Indicators—

The establishment of the position and the implementation of the Plan.

Value—

1.0 FTE from productivity initiative VG9, Rationalisation of distribution of new stock to public libraries.

VA8 GOVERNMENT LIBRARIES CONSULTANCY SERVICES: A WHOLE OF GOVERNMENT APPROACH

Objective—

To assist in continuously improving the provisions of information services to government agencies and officers, reduce the cost of technical services by providing centralised services, minimise duplication and optimise access through a common whole of government database.

Benefits to Clients—

The *Just in Case or Just in Time* Report on government libraries clearly identified a role for LISWA in advising and assisting government agencies with the provision of libraries. Given the number of requests and enquiries received by the State Reference Library from government agencies, there is a constant and ongoing need for our assistance, and a recognition of the benefit of a whole of government approach to the provision of information and library services.

The establishment of such a service has the potential to assist in continuously improving the provisions of information services to government agencies and officers, reduce the cost of technical services by providing centralised services, minimise duplication and optimise access through a common whole of government database.

Performance Indicators—

As a result of the recent restructure, the State Reference Library has an as yet unplaced Level 7 officer. When the officer has been successfully placed in an other agency, that FTE will be used provide advisory and consultancy services to government agencies and their libraries. It is expected that much of this time would be able to be charged to the relevant government agencies which request assistance.

Value—

Equivalent 1 FTE Level 7 = \$85,476 during the period of this agreement.

SCHEDULE 4

LISWA SERVICE DIVISION—CONDITIONS FOR DUTY OFFICERS

1 The following terms are intended to apply to the conditions of employment of all officers who are employed as Duty Officers, pursuant to the terms of the Cultural Centre Award 1987. The terms of this agreement override the Award, to the extent of any inconsistencies.

2. In the interests of promoting productivity and efficiency, and promoting the job satisfaction and income received by

Duty Officers, the parties have agreed on the following initiatives—

2.1 Duty Officers agree and commit to organising and managing their work through team ways of working. This will mean that responsibility will be devolved from management to Duty Officers for the day to day management of the security function at LISWA.

2.2 Duty Officers will determine and control their own rosters of work. The rosters will take into account the needs and interests of the LISWA and its clients. The following provisions will apply to rosters—

- The base shifts of 8.00 am to 4.00 pm and 4.00 pm to midnight must be covered;

- All other shifts must comply to standard agreed times to maximise coverage during opening hours of the Alexander Library Building or parts thereof. Standard agreed times are as follows—

Shift X = 0900 to 1700 hours

Shift XD = 1000 to 1800 hours

Shift XA = 1500 to 2300 hours

- Rosters must be submitted to the House Officer at LISWA for approval no later than 14 days prior to the commencement of a roster period.

- Rosters will include meal breaks during which time the Duty Officer will remain on site.

- Rosters will cover all absences, with the exception of those absences of four (4) days or more which result in only three Duty Officers being available. In these circumstances an officer may be required to work extra hours to cover the absences. In that case those hours shall accrue as time in lieu which can then be taken at a mutually convenient time. Alternatively, a contract officer may be engaged.

2.3 Duty Officers will carry out other duties while patrolling the Alexander Library Building, provided that such other duties do not detract from the fundamental duty of providing security. Such other duties will include, but will not be limited to, the collection and re-stacking or storage of newspapers. The Duty Officers will perform other duties to satisfy the requirement that the role of a Duty Officer contains a reasonable and full time work load. To achieve this end, actual duties will be agreed to between the Duty Officers and management.

2.4 All Duty Officers will agree to be available to attend meetings with management between the time of 3.30 pm and 4.30 pm from time to time, unless a Duty Officer is on leave or on a day they are not rostered to work. Meetings will be held not more than once per month, unless an emergency arises necessitating the presence of all Duty Officers.

3. In order to maintain stability of income, Duty Officers will receive a salary, paid fortnightly, for the term of operation of this agreement. The salary is based on the average earnings of security officers under the terms of the Cultural Centre Award, according to rosters worked for the period 1992/93 to 1994/95.

4. The annual salary of Duty Officers shall be \$35,794, or \$686.15 per week. The payment of this annual salary is based on the following conditions—

- No additional payments will be made for travelling allowance;

- No additional payment will be made for meal allowance for overtime work;

- Salary is inclusive of all shift and overtime payments;

- Annual leave will attract no additional payment for leave loading;

- One weeks additional annual leave entitlement (total of 5 weeks annual leave entitlement).

5. Both parties reserve the right to raise and negotiate any other issues other than those dealt with in this agreement at any time.

6. The parties agree to meet and to review the operation of this agreement no later than two months prior to the expiry of the Ministry for Culture & the Arts, LISWA Service Division Enterprise Bargaining Agreement 1997, with the intention of reaching agreement on a new proposal for Conditions for Duty Officers.

MINISTRY FOR CULTURE & THE ARTS (PERTH THEATRE TRUST) ENTERPRISE BARGAINING AGREEMENT 1997.
No. PSG AG 4 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ministry for Culture & the Arts

and

The Civil Service Association of Western Australia
(Incorporated).

No. PSG AG 4 of 1997.

COMMISSIONER J. F. GREGOR.

22 August 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. PSG AG 4 OF 1997.

HAVING heard Ms L Houghton on behalf of the first named party and Ms J Gaines and Mr D Diamond of on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document titled Ministry for Culture & the Arts (Perth Theatre Trust) Enterprise Bargaining Agreement—1997, filed in the Commission on 4 July 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J.F. GREGOR,
Commissioner.

[L.S.]

MINISTRY FOR CULTURE & THE ARTS (PERTH THEATRE TRUST) ENTERPRISE BARGAINING AGREEMENT 1997

1.—TITLE

This Enterprise Agreement shall be known as the Ministry for Culture & the Arts (Perth Theatre Trust) Enterprise Bargaining Agreement—1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties Bound
4. Scope
5. Estimated Number of Employees Bound
6. Date and Period of Operation and Review
7. Relationship to Parent Awards
8. Single Bargaining Unit
9. Shared Mission For The Trust
10. The Consultation Process to Achieve Agreement
11. Objectives of the Agreement
12. Intent of Agreement
13. Workplace organisation to improve productivity
 - 13.1 Peak Steering Team
 - 13.1.1 Formation of the Peak Steering Team
 - 13.1.2 Implementation of initiatives
 - 13.1.3 Executive commitment
 - 13.1.4 Frequency and timing of meetings
 - 13.1.5 Composition of Peak Steering Team
 - 13.1.6 Administrative Support
 - 13.2 Devolution of Responsibility
 - 13.3 Consolidation of Business Units

- 13.4 Work Teams
- 13.5 Key Performance Indicators
- 13.6 Continuous Improvement
14. Initiatives to support work organisation
 - 14.1 Training and development
 - 14.2 Communications
 - 14.3 Induction program
 - 14.4 Work environment
 - 14.4.1 Occupational health safety and welfare
 - 14.5 Cross-skilling
 - 14.6 Benchmarking
15. General productivity initiatives
 - 15.1 One Award
 - 15.2 Standardisation of pay periods
 - 15.3 Equipment and facilities
 - 15.4 Family Responsibility
 - 15.5 Study Leave
 - 15.6 Meal Allowance
 - 15.7 Place flexibility
 - 15.8 Retention and development of employees
 - 15.9 Blood donors
16. General initiatives
 - 16.1 Workforce management
 - 16.2 Award restructuring
 - 16.3 Ethics
 - 16.4 Dispute resolution process
17. Wage/Salary increases
18. Past and future productivity
19. State Wage Case Principles
20. Execution of Agreement

3.—PARTIES BOUND

This Agreement shall be binding upon the Perth Theatre Trust Service Division of the Ministry for Culture & the Arts and the organisations of employees set out below—

CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA INCORPORATED

WEST AUSTRALIAN THEATRICAL AND AMUSEMENT EMPLOYEES ASSOCIATION

4.—SCOPE

This Agreement shall apply in relation to the Perth Theatre Trust Service Division of the Ministry for Culture & the Arts and employees of the Ministry for Culture & the Arts employed at the Perth Theatre Trust who are members of or who are eligible to be members of the organisations named in Clause 3—Parties bound—of this Agreement.

5.—ESTIMATED NUMBER OF EMPLOYEES BOUND

It is estimated that approximately 190 employees will be bound by this Agreement upon its registration.

6.—DATE AND PERIOD OF OPERATION AND REVIEW

6.1 This Agreement shall be registered in the Western Australia Industrial Commission (WAIRC) and shall operate from 1 July 1997 and shall remain in force until 31 July 1998.

6.2 The parties will review this Agreement six months prior to the date of expiration of this Agreement as to the renewal or replacement of the Agreement.

6.3 The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

6.4 During the life of this agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis for future negotiations.

6.5 Following the process of reviewing this Agreement it will be renewed or replaced by another Agreement or cancelled as appropriate.

6.6 The pay quantum achieved and the working arrangements introduced as a result of this agreement will remain and form the basis for future agreements or continue to apply in the absence of a further agreement except where the Award salary scale exceeds that provided by the Agreement.

6.7 The agreement will continue in force after the expiry of its term or until such time as any of the parties withdraws from the agreement by notification in writing to the other parties and to the WAIRC.

7.—RELATIONSHIP TO PARENT AWARDS

7.1 This Agreement shall be read and interpreted wholly in conjunction with the following Awards—

PUBLIC SERVICE AWARD 1992

THEATRICAL EMPLOYEES (PERTH THEATRE TRUST) AWARD NO 9 OF 1983

and/or registered Agreements or their successor's, provided that where there is any inconsistency, this Agreement shall prevail to the extent of the inconsistency.

7.2 The parties agree that any increase in Award rates of pay for jobs classified under the Theatrical Employees (Perth Theatre Trust) Award resulting from a minimum rates adjustment process applied in accordance with the current Wage Fixing Principles shall not be absorbed.

Should Award rates of pay be varied during the life of this Agreement to incorporate a minimum rates adjustment, an amount equal to the difference between the Award rate of pay applying at date of registration of this Agreement and the revised minimum rate of pay for the appropriate Award classification shall be added to the applicable rates provided in Schedule 1 hereto.

8.—SINGLE BARGAINING UNIT

8.1 The organisations of employees covered by this Agreement have formed a Single Bargaining Unit (SBU) in accordance with the requirements of the January 1992 State Wage Case Decision of the Western Australian Industrial Relations Commission (72 WAIG 191).

8.2 The SBU has held negotiations with the employer and reached full agreement on the terms of this agreement.

8.3 This Agreement has been presented to employees who by consensus have endorsed it.

9.—SHARED VISION FOR PERTH THEATRE TRUST

The Parties to this Agreement are committed in striving to achieve the Perth Theatre Trust's mission which is—

TO MAXIMISE THE EFFECTIVENESS OF PERFORMING ARTS RESOURCES UNDER ITS CONTROL TO ENHANCE THE CULTURAL AND ECONOMIC LIFE OF WESTERN AUSTRALIA

In achieving our mission we have three primary objectives which shape the way we will operate. These are—

- A Provision of high quality venues and services to maximise the cultural and public use of venues managed by the Perth Theatre Trust
- B To provide an efficient ticketing and information service to facilitate access to the Perth Theatre Trust's performing arts venues and targeted marketing information to performing arts companies
- C Efficient and effective management practices

10.—THE CONSULTATIVE PROCESS TO ACHIEVE THIS AGREEMENT

In order to achieve this Agreement the parties agreed to form a single bargaining unit, comprising Management, Employees and Union representatives.

The processes established in arriving at this Agreement involved regular consultative meetings between the Perth Theatre Trust, the Civil Service Association and the West Australian Theatrical and Amusement Employees Association.

All employees were invited to a number of enterprise agreement awareness sessions and these were followed by planning workshops at which employees were asked to identify workplace initiatives to improve work performance and hence increase productivity.

Selected employees, their union officials and management brainstormed the outcomes of the planning workshops to arrive at initiatives to be included in the draft enterprise agreement.

Employees were kept informed about progress through regular communication updates.

The approval process involved all employees at the workplace. All employees received a copy of the Agreement in advance of an explanatory overview provided in the workplace. Employees then voted, resulting in endorsement of the Agreement.

These processes will cease to exist once this Agreement is ratified by the Western Australian Industrial Commission (WAIRC).

11.—OBJECTIVES OF THE AGREEMENT

All parties are committed to improving performance at the Perth Theatre Trust in meeting its strategic objectives as set out in Clause 9. This agreement is the catalyst for improvements through the concepts of "Continuous Improvement", "Autonomous Work Groups" and "Employee Empowerment". The objectives of this Agreement are as follows—

- 11.1 Although the Trust is a Service Division of a State Government Ministry, it operates in a competitive business environment. Every endeavour will be made to improve that Trust's competitive position relative to "Best Practice" industry benchmarks through "Continuous Improvement" processes.
- 11.2 Improving the quality of working life for all our employees.
- 11.3 Facilitating an efficient improvement process by encouraging all employees to identify and deal with real productivity barriers in a participative manner.
- 11.4 Developing an organisational culture that encourages continuous improvement of all processes to achieve reduced cost, less waste and improve quality, technology, work organisation, customer service, delivery, timeliness, safety and training.
- 11.5 Creating the concept of one workforce.
- 11.6 Encouraging employees to be innovative in a consultative and participative environment.
- 11.7 Employees having a strong focus on satisfying internal and external customer service.
- 11.8 Encouraging and facilitating teamwork and team performance with the ultimate objective of achieving self managed work teams with effective leadership at all levels.
- 11.9 Staff development where individuals can develop their competencies and collectively to meet the Trust's Department's needs
- 11.10 Employees co-operating with each other and other work teams.
- 11.11 Employees collecting and using necessary data to improve organisational performance.
- 11.12 Consolidating consultative processes to build an organisation where everyone contributes and performance is rewarded.
- 11.13 Identifying benchmarks as a basis for auditing the whole organisation on a regular basis.
- 11.14 Continuing and supporting the programme of structural efficiency and workplace reform commenced in 1989. The program of work to be completed is contained within the various Memorandums of Agreement, Awards, understandings and Agreements reached in various formal consultative forums.

12.—INTENT OF AGREEMENT

This Agreement is designed to enable the parties to work together in a co-operative manner in an environment of honesty and mutual respect to achieve the highest possible work performance. The parties recognise that continued and enhanced work opportunities can only be achieved by a process of continuously improving the employment security, remuneration, quality, efficiency, safety and productivity of work. These aims will be achieved by the parties committing to a continuing process of identifying activities which can be performed on a more cost effective basis. This includes taking a positive and proactive approach to overcoming inefficiencies based upon traditional philosophies, agreements and practices.

The Trust, in consultation with employees and their Union representatives, will work towards the most effective and efficient means of using internal and external resources with proper regard to the needs, security, training and development and long term efficiency of employees within the Trust.

The parties therefore agree to develop and implement a program to review the potential for Competitive Tendering and Contracting functions in accordance with Government policy.

13.—WORKPLACE ORGANISATION TO IMPROVE PRODUCTIVITY

13.1 PEAK STEERING TEAM

13.1.1 Formation of the Peak Steering Team

A key initiative for maximising employee ownership through involvement and genuine interaction is the formation of a Peak Steering Team. The purpose of the Peak Steering Team is to provide support and positive leadership to employees at the Perth Theatre Trust and to meet the objectives set out below.

13.1.2 Implementation of Initiatives

The responsibility for making decisions lies with all employees. Therefore the Peak Steering Team will guide the implementation of initiatives by meeting the following objectives—

- to develop and maintain the charter and meeting procedure by which the Peak Steering Team operates
- to communicate progress and status of initiatives
- to give employees ownership of the workplace by allowing them to make decisions affecting their work practices, subject to appropriate limitations and the acceptance of responsibility and accountability
- to discuss any issues related to organisation change
- to oversee the successful development, implementation and monitoring of key performance indicators
- to monitor the implementation of the Agreement
- to develop trust and teamwork within the Trust
- to create an environment where everyone is treated in a fair and equitable manner
- to work at creating a workplace where everyone would like to work
- to ensure awareness throughout the Trust of Government policy, and shared responsibility for its implementation

It is acknowledged by the parties that decisions will continue to be made by the Trust and the Ministry for Culture and the Arts which is responsible and accountable to the Government for the efficient and effective operation of the business. The Peak Steering Team will provide valuable input to those decisions.

13.1.3 Executive Commitment

The Peak Steering Team will meet with the Executive/Management Team on a quarterly basis to discuss progress with the implementation of initiatives contained within the Agreement. Strategic issues which may impact on the future direction of the Perth Theatre Trust will be discussed and communicated with employees.

13.1.4 Frequency and Timing of Meetings

Meetings will take place every month at a time to be determined by the Peak Steering Team.

13.1.5 Composition of the Peak Steering Team

The Peak Steering Team will comprise of elected employee representatives (from a representative cross section of the Trust), an official of each union party to this Agreement and management representatives one of which will be the General Manager of the Perth Theatre Trust. The chairperson will be elected by the Peak Steering Team and will be rotated every twelve months. The chairperson will be responsible for the orderly conduct of meetings and ensuring an open and balanced discussion at all meetings.

13.1.6 Administrative Support

The Perth Theatre Trust will provide an Administrative Officer to provide support to the Peak Steering Team. The Administrative Officer is responsible for convening meetings, written notification to members, distribution of agendas and minutes, recording of minutes and follow up of outstanding actions.

MILESTONE—

Within 1 month of registration of the Agreement the Peak Steering Team will be constituted and will have held its first meeting. At the first meeting, the Peak Steering Team will identify its working charter, confirm all milestones and allocate responsibilities and accountabilities accordingly.

13.2 DEVOLUTION OF RESPONSIBILITY

The parties are committed to ensuring that administrative responsibilities are clearly defined and authority is delegated sufficiently to ensure that those to whom responsibilities are assigned have adequate authority to deal expeditiously with matters that arise in the course of discharging their responsibilities. This will enable the Trust to achieve its objective of achieving the flattest organisation structure possible.

A key part of this devolution process will be the development and consolidation of business units and the establishment of empowered work teams at the business unit and cross functional levels of the Trust.

With the move towards business units and empowered work teams there is the recognition by all parties that delegation of responsibility and accountability must be complimentary. Before responsibility is delegated appropriate training and resources will be provided. This is seen as critical to the cultural shift being pursued by the Trust and employees.

The Peak Steering Team will assist in a monitoring, coordinating and supporting role with the allocation and delegation of responsibilities and accountabilities against process, tasks and functions.

13.3 CONSOLIDATION OF BUSINESS UNITS

The parties are committed to improving performance at the Perth Theatre Trust by continuing to devolve responsibility to business units.

MILESTONE—

The parties agree that, within three months, each business unit will establish with the Executive the outcomes, responsibilities, accountabilities, areas of cross subsidisation of operations and resources required for satisfactory achievement of outcomes.

13.4 WORK TEAMS

The parties will promote the concept of autonomous work teams within Business units, functional areas and support levels of the Trust by allowing employees more scope in decision making and involvement in planning in relation to the way work is carried out.

The parties see the following benefit of teams. Teams—

- develop a broader range of tasks and skills
- provide greater flexibility and adaptability
- require less supervision
- are able to respond to technological change more quickly
- act as a catalyst for the introduction of and acceptance of cultural change
- attract and retain the best people (employee retention rates increase)
- improve the work flow

The Peak Steering Team will develop an agreed strategy and plan for the development of teams in the Perth Theatre Trust which will outline the processes, roles and responsibilities of the teams. The strategy will address competencies, resources, remuneration and training requirements and ascertain appropriate levels of delegation.

MILESTONES—

Within six months of registration of the Agreement the Peak Steering Team will support the development of an agreed strategy and plan for the development of teams and employees provided with awareness training on team composition and performance.

Within nine months of registration of the Agreement, work teams will be established and boundaries and outcomes, responsibilities, accountabilities and operational resources/budgets defined.

13.5 KEY PERFORMANCE INDICATORS

The parties agree that Key Performance Indicators (KPI's) will be identified, monitored and evaluated by teams with the main focus being on improving performance through measurement and learning.

The Peak Steering Team will support and monitor the establishment of KPI's at the Perth Theatre Trust.

Appropriate training will be provided to teams and facilitators. The parties are committed to supporting this process by providing necessary resources.

This process will not be used to measure individual performance.

MILESTONES—

Within nine months of registering this Agreement teams and team members will have received training in the implementation of KPIs.

Within twelve months of registration of the Agreement teams will have developed KPI's and be actively monitoring and evaluating the results.

13.6 CONTINUOUS IMPROVEMENT

The parties to this Agreement are committed to improving the organisation of work based on the philosophy of "Continuous Improvement" through the development of a more dynamic, responsive and empowered organisation.

While it is recognised that the Strategic Plan is an evolving document and therefore subject to amendment, the parties will embrace and support the guiding principles of the Plan as detailed in Schedule 2.

14.—INITIATIVES TO SUPPORT WORK ORGANISATION

14.1 TRAINING AND DEVELOPMENT

The parties to this Agreement recognise that in order to increase efficiency and productivity at the Perth Theatre Trust a commitment to relevant training and skill development is required. Accordingly the parties commit themselves to —

- undertaking a training needs analysis
- providing paid time for training
- establishing a training budget
- developing a highly skilled and flexible workforce
- providing employees with career opportunities through appropriate training to acquire new and additional skills which can be used in the workplace
- ensuring better paid and more satisfying jobs
- removing barriers to the utilisation of skills acquired
- supporting employees participating in cross skilling
- supporting employees to operate in a team environment and the change management aspects of team participation

MILESTONE—

Within fifteen months of registration of this Agreement a training needs analysis and a program of relevant training will be developed for employees covered by this Agreement.

14.2 COMMUNICATIONS

The parties agree on the need to improve communications both internally (between employees and between Business Units) and externally with stakeholders eg promoters, customers, etc.

It is further agreed that the parties will examine the communication needs of the Trust and that a communications plan be developed, under the auspices of the Peak Steering Team, which will also address meetings effectiveness and frequency.

MILESTONES—

Within three months of registration of the Agreement a proposal for communication requirements will be completed and presented to the Peak Steering Team for endorsement.

Within six months of registration of the Agreement the endorsed communication plan will be implemented and feedback provided to the Peak Steering Team on the effectiveness of communications within and external to the Trust on a regular basis.

14.3 INDUCTION PROGRAM

The parties acknowledge that service to our customers is a high priority and that there is a need to make existing and new employees aware of the policies and practices of the Trust, the responsibility to their customers, the operations of other areas of the Trust and other factors that will delight customers but at the same time not expose the Trust and employees to public liability.

MILESTONE—

Within six months of the registration of this Agreement an induction program will be developed and endorsed by the Peak Steering Team. The Peak Steering Team will monitor the effective provision of induction training.

14.4 WORK ENVIRONMENT

The parties acknowledge that there are areas within the Trust that require attention to make the work environment conducive to the effective and efficient performance of work.

The parties agree that a survey of working conditions will be conducted and appropriate action taken to improve the work environment within resource constraints and taking into account future management directions of areas identified.

MILESTONES—

Within six months of registration of the Agreement a survey of the work environments of the Trust will be completed and presented to the Peak Steering Team.

14.4.1 Occupational Health Safety and Welfare

A safe working environment will impact positively on the morale and ultimately on the organisation's performance. The parties care about the health and welfare of all employees. In recognition of this the parties agree to—

- comply with current safety legislative requirements
- provide and maintain workplaces where employees are not exposed to hazards
- inform, instruct and supervise employees accordingly

14.5 RECRUITMENT

The parties recognise the need for an effective employee recruitment process for the Perth Theatre Trust based on the following—

- skilful, professional employees should be engaged so as to deliver and support quality services
- embrace "Equal Opportunity" principles in the recruitment process
- utilise appropriate employees to participate in the interview/selection process

MILESTONE

Within six months the Peak Steering Team will support the development of a Recruitment Policy for the Perth Theatre Trust.

14.6 BENCHMARKING

The parties are committed to benchmarking processes and practices within the Trust.

The Peak Steering Team will monitor the benchmarking process, communicate results and promote benchmarking throughout the Trust.

15.—GENERAL PRODUCTIVITY INITIATIVES

15.1 ONE AWARD

The parties agree that during the life of this agreement they will actively pursue the evolution to one award which reflects the nature of the theatrical industry and particularly the environment in which the Perth Theatre Trust operates.

The parties agree that such aspects as simplified classification structures, standardisation of work hours, the concept of annualised hours to absorb penalties and allowances, the concept of a seven day working week, the move to more permanent part time contract employees as opposed to casual employment will be considered for the one award.

It is further agreed that the signatories to this Agreement will be respondents to a consolidated single award.

MILESTONE—

Within the life of this agreement the parties will work towards one award for all employees and have a document with common conditions for consideration at the next round of bargaining.

15.2 STANDARDISATION OF PAY PERIODS

At present there are three separate pay periods which creates administrative work and difficulties for the Trust. The parties agree to investigate the best way of standardising all pay periods.

MILESTONE—

Within three months of the registration of this Agreement there will be an agreed pay period/periods for all employees covered by this Agreement.

15.3 EQUIPMENT AND FACILITIES

A key element of customer satisfaction for both patrons and promoters is the efficiency and quality of venue technical equipment and patron facilities.

The parties acknowledge the need to upgrade the technical equipment and facilities at the venues within the financial constraints placed on the Trust.

MILESTONE—

Within twelve months of registration of this Agreement a phased maintenance/ replacement plan will be developed for venue equipment and facilities and presented to the Peak Steering Team for consideration.

15.4 FAMILY RESPONSIBILITY

The parties are committed to supporting employees both at work and in the area of family responsibilities. During the life of this Agreement the parties will investigate ways of assisting with child minding responsibilities and forms of family leave outlined below—

15.4.1 Parental Leave

(1) Definition

- (a) “Employee” includes full time, part time, permanent and fixed term contract employees
- (b) “Replacement Employee” is an employee specifically engaged to replace an employee proceeding on parental leave.

(2) Eligibility for parental leave

- (a) An employee is entitled to a period of up to 52 weeks unpaid parental leave in respect of the birth of a child to the employee or the employee’s spouse/partner.
- (b) Where an employee applying for the leave is the partner of a pregnant spouse, one weeks annual leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.
- (c) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.
- (d) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees may take any paid leave entitlement in lieu of this leave.
- (e) Subject to sub-Clause (2)(b) of this Clause, where both partners are employed by the Ministry for Culture & the Arts the leave shall not be taken concurrently except under special circumstances and with the approval of the General Manager.

(3) Other leave entitlements

- (a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.
- (b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the General Manager’s approval.
- (c) An employee on parental leave is not entitled to paid sick leave and other paid award absences.
- (d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

- (e) Where a pregnant employee not on parental leave suffers illness related to the employee’s pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and variation

- (a) The employee shall give not less than eight weeks written notice to the General Manager of the date that the employee proposes to commence parental leave stating the period of leave to be taken.
- (b) The employee proceeding on parental leave may elect to take a shorter period of leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(5) Transfer to safe job

- (a) Where illness or risks arising out pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred internally to a safe position of the same classification until the commencement of parental leave.
- (b)
 - (i) Where the employer is unable to provide a safe job with the organisation, or modify the work to the extent required to provide safe employment, with the consent of the employee, and where applicable, the employee may be transferred to another agency until the commencement of parental leave.
 - (ii) Where an external transfer is arranged, the work undertaken by the employee shall be at the same classification and within the employee’s competence.
- (c) If the transfer to a safe position is not practicable, the employee may take leave for such period as is certified by a registered medical practitioner.

(6) Replacement employee

Prior to engaging a replacement employee the Trust shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

(7) Return to work

- (a) An employee shall confirm the intention to return to work by notice in writing to the General Manager not less than eight weeks prior to the expiration of the period of parental leave.
- (b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause (5) hereof the employee is entitled to return to the position occupied immediately prior to transfer.
- (c) Where the position occupied by the employee no longer exists the employee shall be entitled to a position of the same classification level within the employee’s competency and skills.

(8) Effect of leave on Employment Contract

(a) Fixed Term Contract

An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of the contract.

(b) Continuous service

Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant Award or this Agreement.

(c) Termination of employment

An employee on parental leave may terminate employment at any time during the period of leave by written notice.

15.4.2 Family Carers Leave

(1) Employees may, with the consent of the General Manager, use a maximum of five days accrued sick leave in any calendar year in accordance with this clause to provide care for another person, subject to—

- (a) the employee having available not less than ten days accrued sick leave for their own use in that calendar year; and
- (b) the employee being an employee with family responsibilities; and
- (c) the person concerned being either—
 - (i) a member of the employee's immediate family; or
 - (ii) a member of the employee's household
- (d) the term "immediate family" includes—
 - (i) a partner (including a spouse, an immediate former spouse, a de facto spouse, and an immediate former de facto spouse) of the employee. A partner means a person who lives with the first mentioned person on a bona fide domestic basis although not a legally married person; and
 - (ii) a child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent grandparent, grandchild or sibling of the employee or partner of the employee.
- (e) production of satisfactory certification of illness by a registered medical practitioner.

(2) The employee shall, wherever practicable, give the General Manager notice of the intention to take leave prior to the absence, the name of the person requiring care and the relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall provide notification by telephone of such absence.

(3) Leave taken under this provision is deemed to be Sick Leave.

(4) An employee may elect, with the consent of the General Manager, to take unpaid leave for the purpose of providing care for a family member who is ill.

15.5 STUDY LEAVE

15.5.1 Conditions for granting time off—

- (1) An employee may be granted time off with pay for part-time study purposes at the discretion of the General Manager
- (2) Part-time employees are entitled to study leave on the same basis as full-time employees
- (3) Time off with pay may be granted where subjects of approved courses are unavailable outside normal working hours
- (4) Employees shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study
- (5) In every case, the approval of paid leave to attend lectures and tutorials will be subject to—
 - (a) the Trust's convenience
 - (b) the course being undertaken on a part-time basis
 - (c) employees undertaking an acceptable study load in their own time

(d) employees making satisfactory progress with their studies

(e) the course being relevant to the employee's career and being of value to the State

15.5.2 Payment of fees

- (1) The Trust is to meet the payment of higher education administrative charges for cadets and trainees who, as a condition of their employment are required to undertake studies for an accredited course. Employees who of their own volition attend such institutions to gain a higher qualification will be responsible for the payment of fees.
- (2) This assistance does not include the cost of text books or Guild and Society fees
- (3) An employee who is required to repeat a full academic year of the course will be responsible for the payment of higher education fees for that particular year

15.5.3 Approved courses

- (1)
 - (a) Degree or diploma courses at the University of Western Australia, Murdoch University, Curtin University of Technology, Edith Cowan University or Notre Dame University or any other institution approved by the General Manager
 - (b) Diploma and Certificate courses of Technical and Further Education(TAFE) institutions
 - (c) Courses recognised by the national Authority for the Accreditation of Translators and Interpreters (NAATI) in a language relevant to the needs of the Trust
 - (d) Any accredited course at post-secondary level which meets the requirements of sub-paragraph 1(f)(v) of this clause
- (2) An employee who has completed a Diploma through TAFE is eligible for study assistance to undertake a degree course at any of the tertiary institutions listed in sub-paragraph (3)(a)(i) or (ii) of this clause. An employee who has completed a two year full time Certificate through TAFE is eligible for study assistance to undertake a Diploma course specified in sub-paragraph (3)(a)(i) or (ii) of this sub-clause.
- (3) Assistance towards additional qualifications including second or higher degrees may be granted in special cases such as a graduate embarking on a post-graduate Diploma in Administration or a Masters Degree in Business Administration or a higher degree in a specialist area of benefit to the Trust as well as the employee.

15.5.4 General

- (1) In cases where employees are studying subjects which require fortnightly classes, the weekly study leave should be calculated by averaging over two weeks the total fortnightly commitment
- (2) Where a flexi-time system is being operated, time spent attending or travelling to or from formal classes for approved courses between 8.15 an and 4.30 pm less the usual lunch break, and for which "time-off" would be granted, is to be counted as credit time for the purpose of calculating total hours worked per week
- (3) Time off with pay for those who have failed a unit or units may be considered for one repeat year only.

15.5.5 Full time study leave with pay

Full time study leave with pay may be granted at the discretion of the General Manager

15.6 MEAL ALLOWANCE

When an officer has completed a period of overtime and has qualified for the payment of a meal allowance, such allowance may be paid through the normal payroll processing procedures of the Trust. Such payments shall be identified through specific tax processing codes.

15.7 PLACE FLEXIBILITY

The parties commit themselves to evaluating the potential for home-based work, or telecommuting, during the life of this Agreement.

Subject to the Trust's operating requirements, consideration will be given to enhancing opportunities for employees to undertake some of their working hours at home.

15.8 RETENTION AND DEVELOPMENT OF EMPLOYEES

15.8.1 Employees who are or have been absent from the workplace other than on secondment for a period in excess of three months, whether on leave without pay or parental leave shall be permitted to undertake additional employment of a temporary nature with the employer.

15.8.2 Such work shall be deemed additional to the existing employment contract and for which the provisions of casual employment only shall apply.

15.9 BLOOD DONORS

15.9.1 New and regular donors

- (1) Full-time and part-time employees shall be deemed on duty for the purpose of donating blood to the Red Cross Blood Centre during their normal working hours where—
 - (a) prior arrangement with the supervisor has been made; and
 - (b) at least two days notice has been provided

15.9.2 Plasma donors

- (1) Full-time and part-time employees who are plasma donors shall be deemed on duty for the purpose of donating blood product during their normal working hours where—
 - (a) prior arrangement with the supervisor has been made by giving at least two days notice; or
 - (b) the employee is called upon by the blood centre
- (2) The notification period shall be waived or reduced where the supervisor is satisfied that operations would not be unduly affected by the employee's absence

16.—GENERAL INITIATIVES

16.1 WORKFORCE MANAGEMENT

Every endeavour will be made to improve that Trust's competitive position relative to "Best Practice" industry benchmarks through continuous improvement processes. The Trust, in consultation with employees and their union representative will work towards determining the most effective and efficient means of using internal and external resources, with proper regard to the needs, security training and development and long term efficiency of employees within the Trust.

16.2 AWARD RESTRUCTURING

As a requirement of the structural efficiency initiative organisations were required to look at award modernisation. The Perth Theatre Trust has progressed negotiations with the WA Theatrical and Amusement Employees Association to a point where most issues have been agreed.

The parties are committed to achieving a satisfactory outcome and over the next six months will actively work to achieve registration of the new award.

MILESTONE—

Within six months of registration of this Agreement the parties will register a new Theatrical Employees (Perth Theatre Trust) Award.

16.3 ETHICS

The parties support and encourage an ethical environment that encourages positive behaviours based on the following principles which shall include—

- the well being of employees is to be promoted
- all parties are to be treated fairly and not discriminated against
- all parties rights and dignity should be respected
- all parties will be honest in their dealings
- all parties agree to treat sensitive information in relation to customers service and personnel with discretion
- all parties agree to respect the organisation's intellectual property
- conflicts of interest are to be declared by all employees

- information, resources or equipment are to be used in their intended manner by employees

The parties agree to support the development by the Peak Steering Team of a code of ethics for the Trust within six months of registration of this Agreement. The code will be developed with full consultation of all employees.

MILESTONE—

Within six months of registration of this Agreement a code of ethics will be developed and implemented.

16.4 DISPUTE RESOLUTION PROCESS

This process will apply to any question, dispute or difficulty which arises between the parties on the meaning and effect of any terms of this Agreement.

16.4.1 The employee(s) concerned and/or the workplace delegate shall discuss the matters with the appropriate Supervisor in the first instance. An employee who is a member of an appropriate Union may be accompanied by a workplace delegate.

16.4.2 If not resolved within five working days following the discussions in accordance with sub-clause (a) the matter shall be referred to the General Manager of the Trust or his/her nominee for resolution with either the employee and/or the workplace delegate.

16.4.3 If the matter is not resolved within five working days of the notification of (b) hereof, either party may notify the relevant Union Secretary (or his/her nominee) or the General Manager of the Trust (or his/her nominee) of the existence of a dispute or disagreement

Such notification shall be in writing with a copy provided to all other parties. The notification is to include the interpretation of matters in dispute by the parties to the notification.

16.4.4 The Secretary of the relevant Union(s) (or nominee) and the General Manager of the Trust (or his/her nominee) shall confer on the matters notified by the parties within five working days and—

- (1) where there is agreement on the matters in dispute the parties shall be advised within two working days.
- (2) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relations Commission.

16.4.5 Where any matter is referred to the Western Australian Industrial Relations Commission and the matter is not resolved by conciliation, then the matter remaining in dispute may be resolved by arbitration in accordance with the provisions of the Industrial Relations Act 1979 and the State Wage Principles.

16.4.6 Except in exceptional circumstances such matters shall be reserved and only be arbitrated if they remain an issue at the conclusion of negotiations, and arbitration on any aspect of the proposed agreement is necessary. The parties agree to incorporate the outcome of any proceedings before the Western Australian Industrial Relations Commission in a proposed agreement which the parties will apply to register under Section 41 of that Act.

16.4.7 While the above process is being pursued, work shall continue as normal.

16.5.8 At any stage during the process the employee and/or workplace delegate may choose to withdraw the matter at which time the process shall be discontinued.

17.—WAGE/SALARY INCREASES

17.1 The wage and salary increases detailed in this Agreement are payable on the basis of the implementation and achievement of the milestones outlined in this Agreement.

17.2 The increases available under this Agreement will be payable in accordance with Schedule 1 hereto.

17.3 For staff employed under the Theatrical Employees (Perth Theatre Trust) Award, the rates of pay specified in Schedule 1 shall be recalculated in accordance with the provisions of Clause 7.2 of this Agreement if a minimum rates adjustment process results in an increase to the Award rates of pay which applied at date of registration of this Agreement

18.—PAST AND FUTURE PRODUCTIVITY

This Agreement recognises the past productivity initiatives implemented within the Trust and the value of such past

productivity has been taken into account when determining the wage and salary increases available under this Agreement.

Agreed future productivity initiatives to be implemented within the life of this Agreement are detailed in Schedule 3.

Throughout the life of this Agreement, the parties agree that the Peak Steering Team shall have a primary role in supporting and monitoring a range of issues and initiatives aimed at increasing productivity and effectiveness. Indeed, the provisions of this Agreement provide the parties with a broad agenda for achieving the efficiencies necessary to meet the Trust's productivity improvement targets.

However, it is recognised that, in the spirit of the continuous improvement philosophy embraced by the parties through their commitments to this Agreement, productivity initiatives (and their resultant savings) may be achieved in excess of the targets set for the Trust.

Savings in excess of targets will not be overlooked. These productivity initiatives will be appraised by the Peak Steering Team and carried forward for evaluation as part of the next Enterprise Bargaining Agreement.

19.—STATE WAGE PRINCIPLES

19.1 It is a condition of this Agreement that there shall be no further wage increases for its life except where consistent with a State Wage Case decision.

19.2 The parties to the agreement shall be bound by the terms of the Agreement for its duration.

19.3 The parties to the Agreement shall oppose any applications by other parties to be joined to this Enterprise Agreement.

19.4 The terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

19.5 No provisions in this Agreement shall operate to cause any employee a reduction in ordinary time earnings, or to cause a departure from the standards of Western Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

20.—EXECUTION OF AGREEMENT

The signatures of the office holders specified hereunder bind the parties to the provisions of this Agreement with effect from the date of registration with the Western Australian Industrial Relations Commission—

Signatories

Signed for and on behalf of the **Ministry for Culture & the Arts** by—

Dr W J CoxSigned.....
Acting Director General

Date 2/7/97

Signed for and on behalf of the **Civil Service Association** by—

Dave RobinsonSigned.....
Branch Secretary

Date 20/6/97

Signed for and on behalf of the **Western Australian Theatrical and Amusement Employees Association** by—

Drew DymondSigned.....
Secretary

Date 24/6/97

SCHEDULE 1

The annual salaries applicable to staff covered by the Government Officers' Salaries, Allowances and Conditions Award—

Classification	Award Salary \$	1/4/96 +4% \$	1/1/97 +2% \$	1/7/97 +1% \$
Level 1				
Under 17 years	10 873	11 308	11 534	11 649
17 years	12 707	13 215	13 479	13 614
18 years	14 822	15 415	15 723	15 880
19 years	17 157	17 843	18 200	18 382
20 years	19 267	20 038	20 439	20 643
21 years or 1st year of adult service	21 165	22 012	22 452	22 677
22 years or 2nd year of adult service	21 817	22 690	23 144	23 375

Classification	Award Salary \$	1/4/96 +4% \$	1/1/97 +2% \$	1/7/97 +1% \$
23 years or 3rd year of adult service	22 468	23 367	23 834	24 072
24 years or 4th year of adult service	23 115	24 040	24 521	24 766
25 years or 5th year of adult service	23 766	24 717	25 211	25 463
26 years or 6th year of adult service	24 417	25 394	25 902	26 161
27 years or 7th year of adult service	25 166	26 173	26 696	26 963
28 years or 8th year of adult service	25 684	26 711	27 245	27 517
29 years or 9th year of adult service	26 450	27 508	28 058	28 339
Level 2				
1st year	27 367	28 462	29 031	29 321
2nd year	28 070	29 193	29 777	30 075
3rd year	28 809	29 961	30 560	30 866
4th year	29 590	30 774	31 389	31 703
5th year	30 407	31 623	32 255	32 578
Level 3				
1st year	31 530	32 791	33 447	33 781
2nd year	32 405	33 701	34 375	34 719
3rd year	33 307	34 639	35 332	35 685
4th year	34 233	35 602	36 314	36 677
Level 4				
1st year	35 503	36 923	37 661	38 038
2nd year	36 498	37 958	38 717	39 104
3rd year	37 522	39 023	39 803	40 201
Level 5				
1st year	39 494	41 074	41 895	42 314
2nd year	40 827	42 460	43 309	43 742
3rd year	42 212	43 900	44 778	45 226
4th year	43 649	45 395	46 303	46 766
Level 6				
1st year	45 960	47 798	48 754	49 242
2nd year	47 531	49 432	50 421	50 925
3rd year	49 157	51 123	52 145	52 666
4th year	50 893	52 929	53 988	54 528
Level 7				
1st year	53 555	55 697	56 811	57 379
2nd year	55 397	57 613	58 765	59 353
3rd year	57 401	59 697	60 891	61 500
Level 8				
1st year	60 658	63 084	64 346	64 989
2nd year	62 991	65 511	66 821	67 489
3rd year	65 884	68 519	69 889	70 588
Level 9				
1st year	69 497	72 277	73 723	74 460
2nd year	71 938	74 816	76 312	77 075
3rd year	74 722	77 711	79 265	80 058
Class 1	78 932	82 089	83 731	84 568
Class 2	83 142	86 468	88 197	89 079
Class 3	87 350	90 844	92 661	93 588
Class 4	91 560	95 222	97 126	98 097

The weekly and other specified wage rates applicable to staff covered by the Theatrical Employees (Perth Theatre Trust) Award—

	\$	\$	\$	\$
(1) Stage Management Section				
(a) Technical Stage Manager	508.40	528.70	539.30	544.70
(b) Stage Manager	480.40	499.60	509.60	514.70
(c) Assistant Stage Manager	398.00	413.90	420.20	426.40
(2) Mechanical Department				
(a) Workshop				
(i) Head carpenter	468.40	487.10	496.80	501.80
(ii) Carpenter	414.30	430.90	439.50	443.90
(iii) Carpenters Assistant	365.50	380.10	387.70	391.60
(b) Stage				
(i) Head mechanist/head road manager	468.40	487.10	496.80	501.80

	\$	\$	\$	\$		\$	\$	\$	\$
(ii) Mechanist / head flyman/ road manager	414.30	430.90	439.50	443.90	(b) Head booking Clerk (ie. one who supervises the Staff)	475.00	494.00	503.90	508.90
(iii) Stage hand/ flyman	365.50	380.10	387.70	391.60	(c) Booking clerk (including party bookings)	446.90	464.80	474.10	478.80
Loading for stage hands in charge of side/revolve truck: 8 per cent.					(d) Ticket seller	392.30	408.00	416.20	420.40
(3) Electrical/Lighting Department					(e) Programme/ concession sellers/ ushers/ticket takers/ cloakroom attendant	356.30	370.60	378.00	381.80
(a) Head electrician	468.40	487.10	496.80	501.80	(14) Casual employees not engaged to work a performance shall be paid at the following hourly rates which include loading for casual work, with a minimum payment for three and one half hours.				
(b) Electrician/ main switchboard operator	414.30	430.90	439.50	443.90	8 am. to 6 pm.	11.82	12.29	12.54	12.67
(c) Electrical hand	365.50	380.10	387.70	391.60	6 pm. to midnight	17.84	18.55	18.92	19.11
Loading for electrical hand who is required to operate spots/auxiliary switchboard/visual effects: 8 per cent.					Midnight to 8 am.	23.78	24.73	25.22	25.47
(4) Audio Department					(15) Casual back stage employees engaged for a performance when requires for bumping out work between the conclusion of the performance on a Saturday night and 8.00 am Sunday shall be paid the following per hour rate with a minimum payment of three and a half hours	29.72	30.91	31.53	31.85
(a) Head audio technician	468.40	487.10	496.80	501.80					
(b) Audio operator	414.30	430.90	439.50	443.90					
(c) Audio hand	365.50	380.10	387.70	391.60					
NB. Where there is no separate audio department the audio operator/ hand shall be classified under (3) Electrical Lighting Department.									
(5) Wardrobe Section									
(a) Workshop									
(i) Head of wardrobe	468.40	487.10	496.80	501.80					
(ii) Cutter/tailor/ wigmaker/ milliner	414.30	430.90	439.50	443.90					
(iii) Seamstress/ maintenance hand/buyer/ costume jeweller	365.50	380.10	387.70	391.60					
(b) Stage									
(i) Head of department	468.40	487.10	496.80	501.80					
(ii) Wardrobe hand/ dresser/valet	414.30	430.90	439.50	443.90					
(6) Property Department									
(a) Workshop									
(i) Property master/mistress	468.40	487.10	496.80	501.80					
(ii) Property maker	414.30	430.90	439.50	443.90					
(iii) Property hand	365.50	380.10	387.70	391.60					
(b) Stage									
(i) Property master/mistress	468.40	487.10	496.80	501.80					
(ii) Property hand	365.50	380.10	387.70	391.60					
(7) Art Department									
(a) Scenic artist	468.40	487.10	496.80	501.80					
(b) Assistant scenic artist	414.30	430.90	439.50	443.90					
(c) Artist's labourer	365.50	380.10	387.70	391.60					
(8) Services									
(a) Receptionist/ telephonist (enquiry clerk)	356.30	370.60	378.00	381.80					
(b) Firefighter	350.10	364.10	371.40	375.10					
(c) Utility person	357.40	371.70	379.10	382.90					
(d) Stage Door Keeper	350.10	364.10	371.40	375.10					
(9) Cleaners									
(a) Head cleaner	379.50	394.70	402.60	406.60					
(b) Cleaner	372.10	387.00	394.70	398.60					
Engaged by the hour (with a minimum payment as of three and a half hours).									
8 am. to 6 pm.	11.16	11.61	11.84	11.96					
6 pm. to midnight	16.74	17.41	17.76	17.94					
Midnight to 8 am.	22.32	23.21	23.67	23.91					
(10) Skilled labour not classified elsewhere	468.40	487.10	496.80	501.80					
(11) Unskilled labour not classified elsewhere	350.10	364.10	371.40	375.10					
(12) Additional Rates									
Persons employed as casuals in the following classifications shall be paid the specified hourly amounts in addition to the wage provided elsewhere—									
Main switchboard operator	1.38	1.44	1.47	1.49					
Head flyman	1.20	1.25	1.28	1.29					
Person in charge of side	0.38	0.40	0.41	0.41					
(13) Front of House									
(a) Senior Booking Office Supervisor	506.80	527.10	537.60	543.00					

NOTE: Should Award rates of pay be varied during the life of this Agreement to incorporate a minimum rates adjustment, an amount equal to the difference between the Award rate of pay applying at date of registration of this Agreement and the revised minimum rate of pay for the appropriate Award classification shall be added to the applicable rates provided in this Schedule.

SCHEDULE 2

GUIDING PRINCIPLES

Client Focus

1. CLIENT FOCUS

The interests of clients will be paramount in the planning and delivery of Trust policy and services.

2. SERVICES TO PROMOTERS

Promoters are valued clients and the Trust will make a special effort to be responsive to their needs. The Trust will make extra efforts to assist WA companies. The Trust will give forthright advice to these companies to assist them in making the best use of their skills and talents.

3. CUSTOMER FOCUS

The customer is the person who buys tickets to presentations at Perth Theatre Trust venues, who purchases other tickets through BOCS or who uses other services. In all dealings with consumers we recognise them as the central element in our organisation. The Trust will endeavour at all times to treat them as valued clients, will listen to what they tell us, and will endeavour to respond to their stated needs.

4. CONSULTATION WITH CLIENTS

The Trust will endeavour to consult with its major users on important issues and recognise their importance to the organisation as major contributors to the financial well being of the Trust. The Trust will endeavour to regularly consult with the major hirers of the venues and users of the BOCS ticketing system. The Trust recognises that the health of the arts largely rests with the vitality and financial security of local professional companies and their ability to contribute to arts development in the State.

5. RESIDENT COMPANIES

The Trust recognises that a special relationship exists with those companies that are resident in its venues or who use its venues on an almost exclusive basis. These special clients need to be identified and particular arrangements agreed which will not necessarily lead to the same services or attention being delivered to other groups.

Results Through People

6. ADAPTING TO CHANGE

The Trust must adapt to change and encourage staff employed within the Perth Theatre Trust Service Division of the

Ministry for Culture & the Arts to meet the major challenges which change brings to their work.

7. HUMAN RESOURCE POLICY

Staff are the greatest resource available to the Trust and all staff must be allowed to make a contribution. The needs of staff to develop skills and progress have to be recognised. Staff will be consulted on significant management issues and will be involved in discussions affecting their area of work. The Trust will endeavour to be an exemplary manager of staff and fulfil its obligations as a vital commercial operator and the obligations of the Ministry for Culture & the Arts as a public sector employer.

8. E.E.O.

The Trust embraces the principles of Equal Employment Opportunity and will instigate procedures to ensure that these principles are upheld in the organisation.

9. O.H & S

The Trust recognises the need to provide a healthy and safe working environment and will maintain the necessary structures and reporting procedures, involving staff where appropriate to ensure that health and safety risks are minimised at the workplace.

Flexibility and Responsibility

10. FLEXIBILITY AND RESPONSIBILITY

Jobs within the Trust will be designed to maximise the capacity of the organisation to respond to client needs and make effective decisions.

11. RESPONSIVENESS

Consistent with the need to build a commercially oriented organisation, the Trust will endeavour to avoid delays and excessive procedures in order to remain a responsive organisation.

12. REGIONAL PARTICIPATION

The Trust has traditionally sought to assist other performing arts centres in Western Australia, it will continue to be aware of the needs of these communities and their need for performing arts tours and services.

Results Focus

13. PERFORMANCE MANAGEMENT

The Trust will assign clearly defined responsibility and authority to staff and make them accountable for results.

14. COMMERCIALISATION

The Trust is seeking to move toward a more commercial style of operation which recognises the nature of the business in which it is engaged and the significant role that earned income plays in its overall financial situation. The Trust believes that the changes in structure and organisation require to facilitate change to a more commercial operation will benefit the organisation and assist staff to provide their services to the industry and the public.

15. ARTISTIC AWARENESS

The Trust will endeavour to encourage the achievement of the highest standards of presentation in all venues. It will also ensure that presentations in which it is financially involved are assessed to make an appropriate contribution to the local community and chosen for the achievement of excellence in the performing arts.

Strategic Orientation

16. POLICY-PROGRAM FRAMEWORK

The Trust will orientate its strategic planning to the achievement of Government and Ministry for Culture & the Arts policies through appropriate programs.

17. RESOURCE EFFICIENCY

The Trust will endeavour to manage its operation with a maximum efficiency and where possible to adopt practices that will reduce energy consumption and keep the costs of using the venues to a minimum.

Government-Wide Approach

18. MAXIMISING PUBLIC SECTOR CONTRIBUTION

The Trust will co-operate with the Ministry for Culture & the Arts, other members of the Arts Portfolio and the Public Sector to maximise its contribution to whole of Government initiatives

19. CONTROL & REVIEW PROCESS

The completed Strategic Plan will be reviewed on a regular basis. At the conclusion of each six month review the revised plan will be signed off by the senior management team.

20. BUSINESS MANAGEMENT

Each action to be taken to complete a nominated task has to be given a manageable time frame and this time frame will be reviewed on a regular basis in line with the cycle of management meetings. The indicators for each action taken need to be clear and specific to indicate completion and degree of achievement.

Introduction of ABM at all levels to ensure progress toward a quality path incorporating process re-engineering of all work processes in all functional areas of the Trust.

21. CORPORATE OBJECTIVES OF GOVERNMENT

The Trust will note the Corporate Objectives of government and their incorporation into the CE's Performance Agreement

SCHEDULE 3

FUTURE PRODUCTIVITY IMPROVEMENT PLAN

1. MANAGEMENT RESTRUCTURING

Objectives

To facilitate a flatter management structure within the Trust. To utilise the developing skill bases of current managers to manage functions/Business Units not previously directly associated with areas of responsibility.

Implementation

20 May 1996

2. UNIFORMS—BOCS STAFF

Objective

To rationalise the dress-code requirements for BOCS staff to provide an equitable arrangement that suited the needs of the public, staff and the Trust without the cumbersome administrative requirements of the present system.

Implementation

1 June 1996

3. RATIONALISATION OF RECEPTION ARRANGEMENTS—SGC

Objectives

To reallocate the publicity and promotions functions of the Receptionist position to provide a more coordinated approach to the organisations promotional material. To broaden the duties and functions of the Receptionist position to provide a more fulfilling and meaningful role.

Implementation

6 May 1996

4. FINANCIAL MANAGEMENT INFORMATION SYSTEM

Objectives

To introduce accrual accounting to the Trust (target date 1/7/96). To devolve the responsibility for process-oriented functions (accounts payable and, later, accounts receivable) to Business Units for input/interaction directly with the bureau.

Implementation

Upon registration

5. RATIONALISATION OF BOCS STAFFING

Objective

To develop the optimum utilisation of staff within Award and budgetary parameters while maximising service delivery effectiveness to both clients and customers.

Implementation

15 May 1996

6. RATIONALISATION OF PAYROLL SERVICES

Objective

To maximise the usage and cost-effectiveness of the in-house payroll system. To develop more realistic and achievable time-lines associated with the delivery of the Theatrical Employees payroll.

Implementation

1 July 1996

7. TRAINING AND DEVELOPMENT INITIATIVES

Objectives

To take a lead role in the establishment of viable and meaningful industry training programs in line with the Government's training and employment objectives. To provide assistance to both metropolitan, regional and remote centres in providing on-the-job expertise to enhance the viability of the industry in general.

Implementation

1 July 1996

**MINISTRY FOR CULTURE & THE ARTS
(WESTERN AUSTRALIAN MUSEUM DIVISION)
ENTERPRISE BARGAINING AGREEMENT.
No. PSG AG 5 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ministry for Culture & the Arts

and

The Civil Service Association of Western Australia
(Incorporated) and Others.

No. PSG AG 5 of 1997.

COMMISSIONER J. F. GREGOR.

22 August 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. PSG AG 5 OF 1997.

HAVING heard Ms L Houghton on behalf of the first named party and Ms J Gaines on behalf of The Civil Service Association of Western Australia (Incorporated) and Mr G Thomason on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch and Mr R Knox on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document titled Ministry for Culture & the Arts, (Western Australian Museum Division) Enterprise Bargaining Agreement, filed in the Commission on 4 July 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J.F. GREGOR,
Commissioner.

[L.S.]



MINISTRY FOR CULTURE & THE ARTS (WA
MUSEUM DIVISION) ENTERPRISE BARGAINING
AGREEMENT

Western Australian Museum
Francis Street, Perth WA 6000

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1.—TITLE

This Agreement shall be known as the Ministry for Culture & the Arts (Western Australian Museum Division) Enterprise Bargaining Agreement.

2.—ARRANGEMENT

- 1 Title
- 2 Arrangement
- 3 Scope of the Agreement
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- S2 Schedule of Salaries
- S3 Productivity Improvement Plan

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to exclusively to all the Western Australian Museum Division of the Ministry for Culture & the Arts employees (excluding Officers whose salaries and conditions are determined by the Salaries and Allowances Tribunal Act) working in the Western Australian Museum who are members of, or eligible to be members of, the Associations/Employee Associations party to this agreement.

4.—PARTIES TO THE AGREEMENT

4.1 Employer

- Director General of the Ministry for Culture & the Arts

4.2 Employee Associations

- Civil Service Association of Western Australia Incorporated (henceforth known as CSA)
- Australian Liquor, Hospitality and Miscellaneous Workers Union (henceforth known as ALHMWU)
- Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, WA Branch (henceforth known as AFMEPKIU)

5.—DEFINITIONS

“Agreement” The Ministry for Culture & the Arts (Western Australian Museum Division) Enterprise Bargaining Agreement.

“Service Division” The Western Australian Museum

“Employee” For the purpose of this agreement, someone who is referred to at Clause 3—Scope.

“Employer” Director General of the Ministry for Culture & the Arts

“Government” The State Government of Western Australia

“Minister” The Minister or Ministers of the Crown responsible for the administration.

“Employee Associations” The Employee Associations and Associations listed as parties to this agreement which are listed in Clause 4 of this agreement.

“WAIRC” The Western Australian Industrial Relations Commission.

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

a Except where provided herein, this agreement shall operate from 1 July 1997 and expire on 30 September 1997.

b The parties will review this agreement three months prior to the expiration of this agreement to commence negotiations for a new agreement.

c The parties will assess achievements in performance, productivity and efficiency during the term of this agreement.

d The pay quantum achieved as a result of this agreement will remain and form the new base pay rates for future agreements or continue to apply in the absence of a further agreement provided the initiatives and new work practices contained in the agreement continue. Where the award rate is higher compared to this agreement, the award rate shall apply.

e The agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the agreement by notification in writing to the other party and to the WAIRC.

6A.—NUMBER OF EMPLOYEES COVERED

a At the time of lodgement there are 170 employees covered by this Agreement.

7.—NO FURTHER CLAIMS

a The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this agreement or provided for in a National or State Wage Case Decision.

b This agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

This agreement shall be read in conjunction with the appropriate Awards listed in Schedule 1 of this Agreement, which apply to the parties bound to this agreement. In the case of any inconsistencies, this agreement shall have precedence to the extent of the inconsistencies.

9.—SINGLE BARGAINING UNIT

a This agreement has been negotiated through a Single Bargaining Unit (SBU).

b The SBU comprises representatives from the Western Australian Museum, Civil Service Association of Western Australia (CSA), the ALHMWU and the AFMEPKIU.

10.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial agreements or award changes emanating from the “Restructuring and Efficiency Principle” of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases, shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this agreement (see attached).

11.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are —

- To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.
- To achieve the Agency’s mission and improve productivity and efficiency in the Agency’s through ongoing improvements.
- To promote the development of trust and motivation and to continue to foster enhanced employee relations.
- To facilitate greater flexibility in decision making and allocation of human and other resources.
- To promote increased satisfaction from jobs and enhance employment opportunities.
- To develop and pursue changes on a cooperative continuing basis by using participative practices.
- To promote health, safety, welfare and equal opportunity for all employees.

12.—PRODUCTIVITY INITIATIVES

The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery for the Western Australian Museum.

The parties agree to develop and implement the following productivity improvements as detailed in Schedule 3—Productivity Improvement Plan.

[VG]	• Mobility of Staff	Targets to be achieved by 30 Sept 1996
	• Centralisation of Functions	Targets to be achieved by 30 Sept 1996
	• Education	Targets to be achieved by 31 March 1997
	• Marketing and Promotion	Targets to be achieved by 31 March 1997
	• Multi-skilling and Training	Targets to be achieved by 31 March 1997
	• Customer Focus	Targets to be achieved by 30 June 1996
	• Performance Management	Targets to be achieved by 31 March 1997
	• Organisational Restructure	Targets to be achieved by 30 Sept 1996
	• Bureau Service (Arts Portfolio)	Targets to be achieved by 30 Sept 1996
	• Information Technology	Targets to be achieved by 30 Sept 1996
	• Review Roster System	Targets to be achieved by 31 March 1997
	• Span of Working Hours	Targets to be achieved by 31 March 1997
[VA]	The outcomes to be achieved during the term of this agreement are —	
	• Leonardo Project	Targets to be achieved by 31 March 1997
	• Exhibition Development	Targets to be achieved by 31 March 1997
	• Museum Foundation	Targets to be achieved by 31 March 1997
	• Cultural Tourism	Targets to be achieved by 31 March 1997
	• Extended Opening Hours	Targets to be achieved by 31 March 1997

13.—PRODUCTIVITY MEASUREMENT

a The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of the Western Australian Museum to management, employees and other relevant stakeholders.

b The parties agree to assess organisational performance according to the extent to which the objectives of the Western Australian Museum are achieved. The parties agree that performance indicators have a primary role to assist in the attainment of corporate goals in the interests of clients, employees, the Western Australian Museum and the government on behalf of the community.

c Comparisons between the Western Australian Museum's levels of performance are undertaken through the use of performance indicators.

d Performance indicators will be developed by the parties to assess progress in the performance of the changes to work and management practices and organisational outcomes provided for in this Agreement.

e It is agreed that the employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

f The parties agree the value of the initiatives included in this Agreement will be assessed through the application of performance indicators.

g A performance measurement system will be developed and used to calculate the value of productivity improvements in the Western Australian Museum listed in Clause 12.

h The value of productivity improvements will be shared between the Western Australian Museum and its employees. The employees share shall be nominally 60% and the Western Australian Museum, which shall include return to Government on behalf of the community shall receive nominally 40%.

14.—MUSEUM WORKING HOURS

The Museum employees will adopt the following span of ordinary working hours —

- i For Cultural Centre Award and Printing (Government) Award respondents
—6.30am to 7.00pm on any working day;
- ii For Public Service Award respondents
—7.30am—6.30pm on any working day.

15.—NON-REPLACEMENT OF STAFF

Rosters for Cultural Centre Award Respondents —

Management will develop rosters jointly with employees and employee association representatives that provide effective and efficient use of the Museum's capital and Human Resources and actively seek to reduce the overtime costs to the Museum. Such rosters will be developed with due consideration to the social impact of any changes to working hours and within the consultative framework described in Clause 27 and the Award provisions.

This will include rosters that facilitate the mobility of staff including, but not exclusively, relief for the Curators of the Regional Museums and the mobility of Attendant staff.

It is proposed to ensure that rostering be changed so that staff on RDOs are not replaced. As an extension of this it is also proposed that absence on annual, long service and sick leave is not replaced unless in consultation with management.

Any further changes to rostering arrangements required during the life of this agreement as a result of Museum redevelopment initiatives will be considered within the consultative framework described in Clause 27 and the Award provisions.

16.—SALARY INCREASES

a The following salary increase is payable on the basis of implementation and continued cooperation of those improvements and in the productivity work practice changes outlined in the Productivity Improvement Plan at Schedule 3 of this Agreement.

b The following increases will be payable during the life of this agreement —

- i An increase of 4% from date of registration;
- ii A further increase of 2% from 1st October 1996;
- iii A final increase of 1% from 1st April 1997.

c If the targets set by this Agreement are exceeded as a result of improved productivity by employees, the excess will be split 50% for the employees and 50% for the employer as a lump sum at the conclusion of this Agreement.

d Subject to the parties having complied with all the requirements placed upon them by this Agreement, employees shall not be disadvantaged by Government of employer decisions which impact directly upon this agreement.

17.—HIGHER DUTIES ALLOWANCE

For Public Service Award Staff —

An employee who acts in an office which is classified higher than the employee's own substantive office and who performs the full duties and responsibilities of the higher office for a period of ten days or more will be paid an allowance equal to the difference between the employee's own salary and the salary of the acting position, from the date the higher duties commenced.

18.—DISPUTE SETTLEMENT PROCEDURE

In the event of any question, dispute or difficulty arising under the agreement between the parties, the following dispute settlement procedure shall apply —

- a The relevant employee association representative and/or the employee/s concerned shall discuss matters with the immediate supervisor in the first instance. An employee who is a member of their employee association may be accompanied by a representative of that association.
- b If the matter is not resolved within 5 working days following the discussion, in accordance with sub-clause (a) hereof, the matter shall be referred by the relevant employee association representative to the Western Australian Museum, to which the Museum will apply the existing dispute resolution procedures. If still unresolved the matter may be referred by either party to the Western Australian Industrial Relations Commission.

19.—PARENTAL LEAVE

a Definition

- i "Employee" includes full-time, part-time, permanent and fixed term contract employees.
- ii "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

b Eligibility for Parental Leave

- i An employee is entitled to a period of up to 52 weeks unpaid parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.
- ii Where the employee applying for the leave is the partner of a pregnant spouse, one weeks leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.
- iii An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.
- iv An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional one days leave. The employee may take any paid leave entitlement in lieu of this leave. This leave is not subject to accrual and must be taken within any one calendar year.

- v Subject to sub-clause (ii) of this clause where both partners are employed by The Western Australian Museum, the leave shall not be taken concurrently except under special circumstances and with the approval of the Executive Officer.
- vi The above entitlements are based upon the Federal Minimum Conditions legislation and where inconsistencies arise between the above and those Acts, the Federal Acts will apply until the matter is resolved through Dispute Resolution Procedures (Clause 20) or by referral to the WA Industrial Relation Commission.
- vii All other leave entitlements must be exhausted before the 12 month period for unpaid leave is invoked.
- c Other Leave Entitlements
- i An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Executive Officer's approval.
- ii An employee on parental leave is not entitled to paid sick leave and other paid award absences.
- iii Where the pregnancy of an employee terminates other than by the birth of a living child, then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.
- iv Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related medical procedure, the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.
- d Notice and Variation
- i The employee shall give not less than four week's notice in writing to the Western Australian Museum of the date the employee proposes to commence maternity leave, stating the period of leave to be taken.
- ii An employee proceeding on parental leave may elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.
- e Transfer to Safe Job
- i Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it impossible for the employee to continue in her present duties, the duties may be modified, the job may be redesigned, or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.
- ii If the transfer to another position is not practicable, the employee may take unpaid leave (or any outstanding paid leave entitlement other than sick leave) for such period as is certified necessary by a registered medical practitioner.
- f Replacement Employee
- The Museum will seek to accommodate the work of the absent employee through work organisation and job redesign prior to engaging a replacement.
- Prior to engaging a replacement employee, the Western Australian Museum shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.
- g Return to Work
- i An employee shall confirm the intention to return to work by notice in writing to the Western Australian Museum not less than four weeks prior to the expiration of the period of parental leave.
- ii An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job, pursuant so sub-clause (e) hereof the employee is entitled to return to the position occupied immediately prior to the transfer.
- iii An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the part-time provisions of the relevant award.
- iv Where the position occupied by the employee no longer exists, the employee shall be entitled to the position of the same classification level with duties commensurate with their competency profile.
- h Effect of Leave on Employment Contract
- i Fixed Term Contract
- An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.
- ii Termination of Employment
- An employee on parental leave may, by written notice in accordance with the relevant award terminate employment at any time during the period of leave.
- 20.—FAMILY CARERS LEAVE
- a Employees covered by this agreement may with the consent of the employer, use a maximum of five (5) days Sick Leave entitlement in any calendar year in accordance with this clause to provide care for another person subject to:
- i the employee maintaining a minimum ten (10) days accrued or pro rata Sick Leave for their own use during the calendar year, and
- ii the employee being an employee with family responsibilities, and
- iii The person concerned being either —
- a member of the employee's immediate family; or
 - a member of the employee's household
- iv The term "immediate family" includes —
- i A partner, spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A partner means a person who lives with the first mentioned person on a bona fide basis recognised in Common Law as applied in Western Australia although not legally married to that person, and
- a child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.
- v The term "employee with family responsibility" means —
- i the employee being responsible for the care of the person concerned; other than being a paid carer;
- ii the person concerned being a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the employee.
- vi production of a satisfactory evidence of illness of the other person.
- b The employee shall, wherever practicable, give the employer or his nominee notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated duration of absence. If the giving of prior notice is not practicable, the employee shall, as soon as possible, notify the employer of such absence and also apply for the leave in writing before the end of the period of absence.

c Leave taken under this provision shall be deemed Sick Leave.

An employee may also elect with the consent of the employer to take unpaid leave for the purpose of providing care to a family member who is ill for a period equal to accrued Sick Leave entitlements. After this period unpaid leave can be extended to a period equal to all other accrued leave entitlements.

d Entitlement for Sick Leave

i The employer shall credit each permanent officer with the following Sick Leave credits on full pay, which shall be cumulative —

On the completion of initial appointment	6 days
On completion of six months continuous service	6.5 days
On the completion of twelve months continuous service	12.5 days
On the completion of each further period of 12 months Continuous service	12.5 days

ii An officer employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent officer. An officer employed on a fixed term contract for a period less than 12 months, shall be credited with the same entitlement on a pro rata basis for the period of the contract.

iii A part-time officer shall be entitled to the same Sick Leave credits, on a pro rata basis according to the number of hours worked each fortnight. Payment for Sick Leave shall only be made for those hours that would normally have been worked had the officer not been on Sick Leave.

iv The provisions of this clause do not apply to casual officers.

An application for Sick Leave in excess of two consecutive days, or where the five days without certificate has been utilised, shall be supported by a certificate from a registered Medical Practitioner.

21.—COMPASSIONATE LEAVE

a An employee shall, on the death of the partner, spouse, de facto spouse, father, mother, father-in-law, mother-in-law, child, step child, grandchild, brother, sister, stepfather, step-mother, grandfather, grandmother of the employee, be entitled to paid compassionate leave of up to two (2) days. The days need not be consecutive. Compassionate leave is not to be taken during a period of any other kind of leave.

b The right to such paid leave shall be dependent on compliance with the following conditions —

i The employee shall give the employer notice of intention to take such leave as soon as reasonably practicable after the death of such relation;

ii Where requested, satisfactory evidence of such death shall be furnished by the employee to the employer; and

iii The employee shall not be entitled to leave under this clause in respect of any period which coincides with any other period of leave entitlement under this agreement or otherwise.

c For the purpose of this clause, the word “spouse” shall not include a spouse from whom the employee is separated, but shall include a person who lives with the employee as a “de facto” spouse. The words “mother” and “father” shall include a guardian of dependant children.

d The Executive Officer has the discretion to grant additional unpaid compassionate leave to employees.

22.—EMERGENCY SERVICES LEAVE

Pre and post incident paid leave, as publicly defined by Emergency Service Organisations or Public Authorities, shall be granted by the employer to an employee who is an active volunteer member of either the Western Australian State Emergency Service, Western Australian Volunteer Bush Fire Brigade or the St. John Ambulance Brigade.

1 The employer shall be advised as soon as possible by the employee or the emergency organisation regarding the employee’s absence and, where possible,

the expected duration of the absence. The initial absence period granted shall not exceed three days. Further absence will be granted at the direction of the employer to a maximum of ten days.

The application shall be accompanied by a certificate from the emergency organisation, certifying that the employee was required for the specified period.

2 The employee must complete a leave of absence form immediately upon return to work.

23.—BLOOD/PLASMA DONOR’S LEAVE

1 New and Regular Donors

i Employees shall be entitled to 2 hours per quarter year of paid leave for the purpose of donating blood to the Red Cross Blood Centre where —

a prior arrangement with the Supervisor has been made, and

b at least two (2) days notice has been provided.

2 Plasma Donors

i Employees who are plasma donors shall be entitled to two (2) hours per month of paid leave for the purpose of donating blood product where —

a prior arrangement with the Supervisor has been made, by giving at least two (2) days notice or,

b the employee is called upon by the Blood Centre.

ii The notification period shall be waived or reduced where the Supervisor is satisfied that operations would not be unduly affected by the employee’s absence.

24.—EMPLOYEE ASSOCIATION FACILITIES, ACCESS

a The Western Australian Museum recognises and supports the rights of employee associations to organise and represent employees. Constructive and consultative labour relations are important for economic development and increased organisational productivity and rely on cooperation between the industrial partners based on mutual recognition and respect.

b Role and Responsibilities of Workplace Delegates

As representatives of the employee association, workplace delegates have a legitimate role and function in assisting the union in the tasks of recruiting members, communicating with those members and providing them with relevant union information and services.

Furthermore, there may be issues within the agency that relate to employee grievances. Such issues may also relate directly to the employee/employer relationship and the appropriate involvement of a workplace delegate will generally assist in resolving the grievance and thereby contribute to harmonious labour relations within the agency.

A workplace delegate also needs to be aware that the primary role of an employee is to fulfil the contract of employment and that union activities undertaken will not unreasonably interfere with work duties.

c Workplace Delegates—Role in respect to other authorised employee representatives.

Where there are agreed procedures designed to deal with specific issues such as Equal Employment Opportunity and Occupational Health Safety and Welfare for which legitimate authorised and trained representatives have been appointed, a workplace delegate will refer any such issues arising to the appropriate representative.

d The Agency’s Role and Responsibilities in the Conduct of Employee Relations.

The Western Australian Museum recognises appointed/elected workplace delegates and will provide cooperation and support, so that they are able to carry out their role and functions effectively. These functions should relate to the rights and interests of the employees in the workplace.

e The parties agree to adopt the definition of a workplace as defined in the Occupational Health, Safety & Welfare Act 1984 as “a place, whether or not in an aircraft, ship, vehicle, building or other structure, where employees work or are likely to be in the course of their work”.

f Following the election or appointment of a workplace delegate, the employee association will advise the Western Australian Museum in writing, of such election or appointment. The workplace delegate will be issued with written credentials by the union, authorising them to act as a workplace delegate in accordance with the provisions of this clause.

g The Western Australian Museum shall also recognise the authorisation of each person so elected/appointed to act in accordance with the duties of a workplace delegate. In recognising workplace delegates, the Western Australian Museum acknowledges that they have a role to play in the workplace. Such a role includes both rights and responsibilities.

h The Western Australian Museum and workplace delegates are committed to effective consultation in the workplace, which can improve the working lives of employees and productivity of the Western Australian Museum.

i Workplace delegates shall be protected from any victimisation which may arise out of their need to carry out their duties as a delegate. The Western Australian Museum recognises that workplace delegates will not be threatened or disadvantaged in any way as a result of their role as workplace delegates.

j Workplace delegates shall be granted access to facilities required for the purpose of carrying out their duties. Facilities may include but not be limited to access to relevant documents and administration resources. Such access to facilities shall be negotiated with the branch of employee association and shall not unreasonably be withheld or affect the operation of the Western Australian Museum.

k Workplace delegates shall have the right to display union material at the workplace on a noticeboard provided by the Western Australian Museum.

l On request, delegates shall be provided with the names and locations of new employees. It is recognised that such information is necessary to permit execution of the duties of workplace delegate.

m Any dispute concerning the interpretation of this clause should be resolved within the Western Australian Museum where possible, however this does not preclude either party from seeking advice in order to resolve the dispute at any stage in the process.

n The duly authorised official of the union shall on notification to The Western Australian Museum have the right to enter the agency's premises during working hours, including meal breaks, for the purpose of discussing with employees covered by this agreement, the legitimate business of the union or for the purpose of investigating complaints concerning the application of this agreement, but shall in no way interfere with the work of the employees.

25.—MANAGING SIGNIFICANT WORKPLACE CHANGE

Where the employer contemplates the introduction of major changes in program, organisation, structure or technology that are likely to have a significant effect on an employee or a group of employees, or is likely to entail terminations by way of a redundancy, the employer shall consult the employees and the relevant union as soon as possible on —

- a The proposed changes;
- b The expected effects of the changes on employees;
- c The measures for averting or mitigating the adverse effects of such changes on employees; and
- d Any other matters likely to affect employees.

Significant effect includes, but is not limited to —

- a Termination of employment;
- b Major changes to either the composition of the workforce or the operations carried out within the workplace;
- c Significant changes in the skills required of the employer's workforce;
- d The elimination or diminution of job opportunities and/or promotion opportunities;
- e The need for re-training or transfer of employees to other work or locations;

f Restructuring of jobs.

26.—CONSULTATION

The parties are committed to working together to improve the business performance and working environment of the WA Museum. Whilst it is acknowledged by the parties that decisions will continue to be made by the WA Museum, which is responsible and accountable to Government by statute for the efficient and effective operation of its business, the parties are committed to effective communication and agree, in particular, that —

- i Where the WA Museum proposes to make changes likely to affect existing practices, working conditions or employment prospects of employees, the relevant union and the staff affected shall be notified by the WA Museum as early as possible.
- ii Consultation with employees and the union parties to the agreement on proposed changes to work organisation shall occur prior to final decisions being made.
- iii Employees will be involved in contributing to the efficiency and effectiveness of their workplace within policies and guidelines.
- iv In the context of this clause consultation shall mean information sharing and discussion on matters relevant to the decision making processes which shall be conducted in such a way as to enable the parties to contribute to the decision making process.

27.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories —

Signed for and on behalf of —

Civil Service Association of Western Australia Incorporated

DAVE ROBINSONSigned.....
Full Name Signature
Date: 20/6/97

Signed for on behalf of

Australian Liquor, Hospitality and Miscellaneous Workers Division, WA Branch

HELEN MARGARET CREEDSigned.....
Full Name Signature
Date: 30/6/97

Signed for on behalf of

Automotive, Food, Metals, Engineering, Printing and Kindred Union, WA Branch

GARY THOMAS BUCKNALLSigned.....
Full Name Signature
Date: 1/7/97

Signed for on behalf of

The Ministry for Culture and the Arts —

WALTER JACOB COXSigned.....
Full Name Signature
Date: 2/7/97

SCHEDULE 1.—RELEVANT AWARDS TO THIS AGREEMENT

- 1 Public Service Award 1992.
Union Respondent : Civil Service Association of WA (CSA).
- 2 Western Australian Public Sector (Civil Service Association) Enterprise Bargaining Framework Agreement 1995.
- 3 Cultural Centre Award 1987.
Union Respondent : Australian Liquor, Hospitality and Miscellaneous Workers' Union (ALHMWU).
- 4 Miscellaneous Government Conditions and Allowances Award 1992.
This Award is to be read in conjunction with the Cultural Centre Award.
- 5 Printing (Government) Award 1990.
Union Respondent : Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, WA Branch.

A	LEVEL 6	6.10	1,762.04	45,960	47,798	48,717	49,205	916.26	1,458.65	662.46	2,121.11	487.17
		6.20	1,822.27	47,531	49,432	50,383	50,887	947.58	1,508.51	685.11	2,193.61	503.83
		6.30	1,884.61	49,157	51,123	52,106	52,627	980.00	1,560.11	708.54	2,268.66	521.06
		6.40	1,951.17	50,893	52,929	53,947	54,486	1,014.61	1,615.21	733.57	2,348.78	539.47
W	LEVEL 7	7.10	2,053.23	53,555	55,697	56,768	57,336	1,067.68	1,699.70	771.94	2,471.64	567.68
		7.20	2,123.85	55,397	57,613	58,721	59,308	1,104.40	1,758.16	798.49	2,556.65	587.21
A	LEVEL 8	7.30	2,200.68	57,401	59,697	60,845	61,454	1,144.35	1,821.76	827.37	2,649.14	608.45
		8.10	2,325.55	60,658	63,084	64,298	64,941	1,209.29	1,925.13	874.32	2,799.45	642.98
R	LEVEL 9	8.20	2,414.99	62,991	65,511	66,770	67,438	1,255.79	1,999.17	907.95	2,907.12	667.70
		8.30	2,525.90	65,884	68,519	69,837	70,535	1,313.47	2,090.99	949.64	3,040.63	698.37
		9.10	2,664.42	69,497	72,277	73,667	74,403	1,385.50	2,205.66	1,001.72	3,207.38	736.67
D	CLASS 1	9.20	2,758.01	71,938	74,816	76,254	77,017	1,434.17	2,283.13	1,036.91	3,320.04	762.54
		9.30	2,864.74	74,722	77,711	79,205	79,997	1,489.66	2,371.48	1,077.03	3,448.52	792.05
		10.10	3,026.15	78,932	82,089	83,668	84,505	1,573.60	2,505.10	1,137.72	3,642.82	836.68
		10.20	3,187.55	83,142	86,468	88,130	89,012	1,657.53	2,638.71	1,198.40	3,837.11	881.30
D	CLASS 2	10.30	3,348.88	87,350	90,844	92,591	93,517	1,741.42	2,772.26	1,259.05	4,031.32	925.91
		10.40	3,510.29	91,560	95,222	97,054	98,024	1,825.35	2,905.88	1,319.74	4,225.62	970.54
		24.10	1,049.21	27,367	28,462	29,009	29,299	545.59	868.56	394.46	1,263.02	290.09
		24.20	1,104.50	28,809	29,961	30,538	30,843	574.34	914.33	415.25	1,329.58	305.38
D	CLASS 3	24.30	1,165.76	30,407	31,623	32,231	32,554	606.20	965.04	438.28	1,403.32	322.31
		24.40	1,242.36	32,405	33,701	34,349	34,693	646.03	1,028.45	467.08	1,495.53	343.49
		24.50	1,361.14	35,503	36,923	37,633	38,010	707.79	1,126.78	511.74	1,638.51	376.33
		24.60	1,438.54	37,522	39,023	39,773	40,171	748.04	1,190.85	540.84	1,731.69	397.73
CULTURAL	R/A	60.10	820.60	21,404	22,260	22,688	22,915	426.71	679.31	308.51	987.82	226.88
		60.20	837.40	21,842	22,716	23,153	23,384	435.45	693.22	314.83	1,008.05	231.53
		60.30	854.20	22,280	23,172	23,617	23,853	444.18	707.12	321.15	1,028.27	236.17
CENTRE	ASSIST SUPER	61.10	896.00	23,371	24,305	24,773	25,021	465.92	741.73	336.86	1,078.59	247.73
		61.20	912.40	23,798	24,750	25,226	25,479	474.45	755.30	343.03	1,098.33	252.26
		61.30	928.80	24,226	25,195	25,680	25,937	482.98	768.88	349.19	1,118.07	256.80
CENTRE	SUPER	62.10	984.40	25,676	26,703	27,217	27,489	511.89	814.90	370.10	1,185.00	272.17
		62.20	1,015.00	26,475	27,534	28,063	28,344	527.80	840.24	381.60	1,221.84	280.63
AWARD	CLEANER	65.10	772.20	20,142	20,947	21,350	21,564	401.54	639.24	290.32	929.56	213.50
		65.20	780.20	20,350	21,164	21,571	21,787	405.70	645.86	293.33	939.19	215.71
		65.30	788.60	20,569	21,392	21,803	22,022	410.07	652.82	296.48	949.30	218.03
AWARD	PRINTER	71.40	985.60	25,708	26,736	27,250	27,523	512.51	815.90	370.55	1,186.45	272.50
		71.50	1,033.40	26,955	28,033	28,572	28,858	537.37	855.47	388.52	1,243.99	285.72
AWARD	PRINTER	71.60	1,080.40	28,180	29,308	29,871	30,170	561.81	894.38	406.19	1,300.56	298.71
		71.70	1,129.40	29,459	30,637	31,226	31,538	587.29	934.94	424.61	1,359.55	312.26

WESTERN AUSTRALIAN MUSEUM
PRODUCTIVITY IMPROVEMENT PLAN 1996

W.A. MUSEUM
PRODUCTIVITY IMPROVEMENT PLAN
PROPOSED ENTERPRISE AND WORKPLACE
AGREEMENT

SUMMARY GIVING DETAILS
OF VALUE GENERATED FROM
INCREASED PRODUCTIVITY
DURING THE PERIOD OF THE
AGREEMENT.

VG	Value generated from Productivity Improvements	Value \$	VA	Values Applied to New Services	Value \$
1	Mobility of staff	39,873	1	Leonardo Project	93,543
2	Centralisation of Functions		2	Exhibition Development	135,000
2.1	Education	47,208	3	Museum Foundation	55,132
2.2	Marketing & Promotion	36,408	4	Cultural Tourism	24,000
3	Multiskilling & Training	15,000	5	Extended Opening Hours	88,216
4	Customer Focus	33,450			
5	Performance Management	290,741			
6	Organisational Restructure	87,790			
7	Bureau Service (Arts Portfolio)	42,435			
8	Information Technology	61,761			
9	Review Roster System	30,000			
10	Span of Working Hours	5175			
	Total	689,841			395,891

Notes:

The difference of Values Generated and Values Applied in the above table is being allocated to the salaries increases for staff
= 293,950

The total increase of salaries, wages and related staff costs of this 18 months agreement will

cost the organisation \$466 000 for the 1995/96 and 1996/97 financial year. Approx. 50% of

this total will be recouped from Government as a supplementary funding request.

VG 1 : MOBILITY OF STAFF BETWEEN SITES

Description

This initiative provides for staff of the Museum to be transferred between sites of the Museum to cover a variety of situations. For example, for professional staff, this means providing short term relief for the Branch Curators whilst on annual or long service leave. For receptionist attendant staff, it means mobility between metropolitan sites primarily to cover unexpected short term absences.

Benefits

- Reduced salaries and wages replacement costs relating to absences.
- Improved service delivery.
- Enhanced client focus.
- Over time, a better understanding amongst staff of the Museum's objectives and work practices.
- Opportunities for staff development and multiskilling in acting positions.

Savings

Savings equivalent to 1 FTE Level 1 are anticipated—
ie \$26 582 per annum inclusive of overheads (15%), \$39 873 for the duration of this agreement.

Performance Indicators

Base Indicator : Current number of temporary staff employed.

Target : Reduction in the number of temporary employees rather than use of short term relief by existing staff, by expiry of the Agreement.

Base Indicator : Currently very few mobility opportunities are offered to staff.

Target : Development of an awareness of this policy so that mobility opportunities can be offered wherever possible.

VG 2.1 : CENTRALISATION OF FUNCTIONS—EDUCATION

Description

The aim of this initiative is to co-ordinate the Museum's educational services through the Education Branch on the Perth Site.

Benefits

- Greater utilisation of specialised educational resources.
- Enhanced client focus.
- An increased range of educational programmes provided.
- Increased consistency across the Museum in the programmes provided.
- Greater accessibility of public programmes.
- By consolidating some education services centrally, workloads in regions will be substantially reduced and will help decrease pressure to employ additional educational staff.
- Central education staff are committed to additional output with the same number of FTE's.

Savings

It is expected that savings equivalent to 1 FTE Level 2/4 1st Year will be realised. The majority of the saving will be in the Social and Cultural Museum.- Total savings = \$31 472 per annum inclusive of overheads (15%), which equates to \$47 208 for the duration of this agreement.

Performance Indicators

Base Indicator : Currently education programmes are developed independently in each Museum site.

Target : The development of a range of educational programmes that can be transported and adapted for use in all Museum sites.

Base Indicator : Current number of FTEs substantively allocated to Perth Education function.

Target : Maintenance of existing FTE levels, but an increase in the number and variety of educational programmes offered.

VG 2.2 : CENTRALISATION OF FUNCTIONS—MARKETING AND PROMOTION

Description

Over time a small marketing and promotions role has developed as part of a number of jobs across the Museum. This initiative will centralise the function at the Perth Site and allow staff at other sites who had a minor marketing/promotion role to concentrate on their primary functions

Benefits

- Development of a range of promotional literature for use across the Museum in attracting visitors and promoting its product.
- Consistency in marketing and promotional initiatives across the Museum.
- More consistent approach to attracting sponsorship and using sponsorship money.
- Enhanced ability to develop promotional campaigns of relevance across the Museum.
- By consolidating some marketing and promotion services centrally, workloads in regions will be substantially reduced and will help decrease pressure to employ additional staff or consultancies.
- Centrally located staff are committed to additional output with same number of FTE's.

Savings

Equivalent of 0.5 FTE Level 5 3rd Year—realised at all Sub Programs including the regions. ie \$24 272 per annum inclusive of overheads (15%), \$36 408 for the duration of this agreement.

Performance Indicators

Base Indicator : Currently marketing and promotional activities are undertaken independently in each Museum site.

Target : The development of an approach and range of marketing and promotional activities that can be transported and adapted by each Museum site.

Base Indicator : A number of JDFs other than that of the Perth Sites' marketing/promotion officer have a marketing/promotion component.

Target : Containing that component in those JDFs so that the officers concerned can focus on their principal role within the organisation.

VG 3 : MULTISKILLING/TRAINING**Description**

It is intended to change the role of receptionist attendant staff to a more active role providing guided tours (for which there will be a nominal charge) of the Museum's sites and their exhibitions.

Benefits

- Enhanced job satisfaction for receptionist/attendant staff.
- Proactive role for attendant receptionist staff in disseminating information about the Museum and its exhibitions.
- Enhanced client focus.
- Public enquires will be dealt with more efficiently and promptly.
- Increased revenue through increased visitors to the Museum.
- The increased income will assist the Museum in establishing the infrastructure for value applied projects.

Value

Estimated 5 000 visitors paying \$2.00 per person = \$10 000 per annum, \$ 15 000 for the duration of this agreement.

Performance Indicators

Base Indicator : Currently visitors to the Museum are attracted by existing and special displays.

Target : To increase the number of visitors to Museum sites by offering planned and regular Museum tours.

Base Indicator : Current visitor revenue is made up solely of entry donations and retail purchases.

Target : Increased visitor revenue through participation in guided Museum tours.

VG 4 : CUSTOMER FOCUS**Description**

This initiative is intended to facilitate enhanced access to information about exhibits and collections and to stimulating and appropriate education programmes.

Benefits

- The ability to provide accurate and current information at all times.
- Enhanced ability to provide visitors with more timely feedback, or where this not possible identify the most appropriate person to action a query.
- Improved Museum signage and text with exhibits that are relevant to a broader cross section of the public.
- The increased income will assist the Museum in establishing the infrastructure for value applied projects.
- Staff is committed to increase turnover in the retail outlets managed by the organisation.

Value

It is expected that as a result of this initiative, visitations will increase and therefore revenue from retail outlets will increase. Estimated revenue increase is 10% of gross income of \$223 000 = \$22 300 per annum, \$33 450 for the duration of this agreement.

Performance Indicators

Base Indicator : Current turnover of the Museum's retail outlets.

Target : An increase in retail turnover of 10%.

VG 5 : PERFORMANCE MANAGEMENT**Description**

The introduction of performance based appraisal for senior staff of the Museum. The current appraisal process in use is based on the Public Sector PS52 model. This appraisal process will be upgraded to reflect the specific needs of the WA Museum. The introduction of performance appraisal for senior staff (level 5 and above) will introduce or provide for greater accountability and productivity of these officers through ensuring best practice in the allocation of all human and physical resources to achieve the strategic and operational goals of the organisation.

Benefits

- Increases the accountability and productivity of senior staff by —
 - * Linking individual performance to the Museum's strategic and operational requirements.
 - * Ensuring that both the officer and the Museum are clear about the goals to be achieved.
 - * Securing the commitment of senior staff to ensuring that the Museum's strategic aims are met.
- Meets the principles of government legislation.

Value

There are 39 staff at Level 5 and above who are considered senior staff. The total FTE for the Museum is 170, less 39 is 131 FTEs supervised by the 39 senior staff.

131 FTEs = \$3 876 560 salary/wages 1996/97 @ 2 hour per week increased productivity = 5% = \$ 193 828 per annum, \$ 290 741 for the duration of this agreement.

Performance Indicators

Base Indicator : Currently there is not a general awareness amongst staff of the Museum's corporate and strategic objectives when compared to the awareness of site—specific objectives.

Target : To encourage the commitment of staff to the Museum's goals and the productivity gains arising from this Agreement through continual promotion of its corporate and strategic plans.

Base Indicator : Outcome based performance management, with senior staff accountable for the successful completion of a number of key projects, ie

- Complete refurbishment of Fremantle Museum;
- Completion of Hackett Hall; and
- Entrance Hall.

Target : Performance based appraisal linked with a management endorsed strategic plan.

Implementation of project teams with identified outcomes, in line with a continuous improvement philosophy.

VG 6 : ORGANISATIONAL RESTRUCTURE**Description**

Restructuring has been continuous in the Museum since 1992. The most recent restructure saw the establishment of the following —

- Perth Museum (Perth Site—Natural Sciences)
- Social & Cultural History Museum (Fremantle History Museum—Finnerty St and Perth Site)
- WA Maritime Museum (Cliff St Fremantle)
- Museum Services
- Public Programmes

Benefits

- Strategic partnerships between and within the organisational units are encouraged.
- Better management of physical, human and financial resources.
- CEO able to divest various day-to-day administrative functions.
- Commitment by staff to re-direct and apply human resources to identified strategic needs.

Savings

Since organisational restructure has been ongoing within the Museum since 1992, the cost associated with change and uncertainty of end result cannot be accurately assessed. Overall however, savings of 1 FTE Level 6, 4th Year have been identified—\$56 526 per annum inclusive of overheads (15%), \$87 790 for the duration of this agreement.

Performance Indicators

Base Indicator : The Museum has an approved average staffing level of 170 FTEs.

Target : Reallocation of existing resources to areas of strategic need—for example the Leonardo Project, Cultural Tourism, Capital Works Project Co—ordinator.

VG 7 : BUREAU SERVICE**Description**

The Agencies of the Arts Portfolio—WA Museum, Art Gallery, LISWA, Perth Theatre Trust, Screenwest—are proceeding to provide a bureau service for the finance and personnel functions. The bureau is to be housed in the LISWA building and will operate on a fee for service basis. The Museum expects to lose 3 to 4 FTEs as a result of restructuring around the bureau service.

Benefits

- Cost savings in providing financial services, payroll and human resources administrative services to the Museum.

Savings/Costs

The cost of accessing the bureau on a fee for service basis is expected to utilise most of the salary savings resulting from formation of the bureau. Notwithstanding, some cash savings are anticipated.

The financial services component is expected to realise a current saving of approximately \$15 000 per annum. A future saving resulting from rationalisation of the Human Resources function is estimated at 0.5 FTE Level 1, 4th Year—\$13 290 per annum inclusive of overheads (15%).

Total savings \$28 290 per annum, \$42 435 for the duration of this agreement.

Performance Indicators

Base Indicator : Current salary and FTE allocation to the Corporate Services Branch.

Target : Implementation of the Bureau Service by redirecting the existing allocations and realisation of net saving.

VG 8 : INFORMATION TECHNOLOGY**Description**

About 12 months ago the Museum outsourced its IT function. It now seeks from various external suppliers the infrastructure to support and maintain its computing needs. Current projects include—

- Computerisation of the collections database.
- Decentralisation of the Museum's financial, human resources and IT management systems.
- Rationalisation of desktop office systems and the introduction of a new computerised records management system.

The Museum has established 5 Information Technology Committees, as part of an integrated plan for the development of Information Technology systems which support the business of the organisation.

Benefits

- The establishment of an IT network that includes Fremantle sites and Regional Museums.
- Compatibility of systems to enable improved communication throughout the Museum.
- Greater access to the linked resources of Arts Portfolio Agencies for the advancement of knowledge and expertise through the use of networked communication.
- Commitment of staff to serve on various committees on an ongoing basis to establish and monitor the Information Technology policies and practices of the organisation.
- The change in responsibilities brought about by workplace reforms (contracting out) has resulted in a general sharing of duties amongst the remaining staff, ie multi-skilling.
- Computer training is already underway to familiarise all staff with the computer skills necessary to make full use of the word processing, and electronic mail facilities, via the Internet.
- Use of the Internet has resulted in increased productivity from staff in the areas of research and communication within the global museum and scientific networks, and savings to the organisation in terms of stationary and postage.

Value/Savings

39 senior staff at Level 5 and above using IT equipment. 39 staff = \$2 013 246 salary/wages 1996/97 @ 1 week per year = 2%. Productivity = 1 day per month + communication contingency savings.

The estimated overall notional saving of \$40 265 per annum, \$61 761 for the duration of this agreement.

Performance Indicators

Base Indicators : The Museum has established 5 Information Technology Committees—Database Committee, Desktop Committee, Imaging Committee, Network Committee and Management Steering Committee—utilising about 15 Museum staff.

Target : The ongoing commitment of these staff members to absorbing duties in addition to their normal duties, which were formerly undertaken by substantive IT staff.

Through the consultative process, the Information Technology Committee network will identify and document issues associated with the present and future IT systems, including

- Network connectivity—local and wide area standards.
- Departmental interaction—to provide high routing facilities to enable quality links to other Agencies
- Desktop upgrade—formalising the structure and setting of standard operating environments
- Database systems—investigating and selecting an appropriate museum database system
- Imaging and investigating Museum requirements and the impact on the IT environment that the introduction of this technology will have.

VG 9 : REVIEW AND COMPUTERISATION OF ATTENDANTS ROSTERING SYSTEM**Description**

The rostering system is to be changed to provide a more effective and cost efficient model of fortnightly rosters. Presently at the Perth Site, the same team of two opens up in the morning and locks up at night, which results in an automatic daily overtime component since the individual staff members work more than eight hours. Receptionist/Attendant staff have given their commitment to changing the present roster system so that there are two teams, one to open up and one to lock up, neither to work more than their eight hour shift.

Benefits

- Overall roster management more efficient and effective.
- More flexibility in staffing public areas.
- More flexibility in service delivery.
- Staff are committed to additional output with same number of FTE's.
- The anticipated savings will assist the Museum in establishing the infrastructure for value applied projects.

Savings

The saving has been calculated at the Perth Site to be approximately \$20 000 per annum, \$30 000 for the duration of this agreement.

Performance Indicators

Base Indicator : Overtime component of the wages bill for financial year 1995/96.

Target : Overtime reduced by \$20 000 for the financial year 1996/97.

VG 10 : SPAN OF MUSEUM WORKING HOURS**Description**

Moves forward the working hours for staff under the GOSAC Award by 30 minutes. Span of ordinary hours now 7.30am to 6.30pm.

Benefits

- More flexibility for management in staffing special occasions or exhibitions.
- Improved management of overtime, and reduced overtime component of salaries bill.

- More cost efficient staffing to public areas when needed.

Savings

A saving of 1/2 hour's overtime at time and one half = 3/4 hour salary. Average 150 hours @ \$20 per hour = \$3 000 + overheads (15%) = \$3 450 per annum, \$5 175 for the duration of this agreement.

Performance Indicators

Base Indicator : Overtime component of the salaries bill for financial year 1995/96.

Target : Overtime reduced by \$3 450 for the financial year 1996/97.

VA 1 : THE LEONARDO PROJECT

Description

"Leonardo" is the name given to an interactive multimedia project being undertaken jointly by the WA Museum and a number of other cultural and academic institutions. It is aimed at providing greater public access to cultural material through networked interactive multimedia.

Access will be through the Internet, allowing unique collections of the Museum, Art Gallery, LISWA and other organisations to become available to both the local and the international community.

Benefits

- Staff are committed to contribute to the image capture and digitalisation of collections in addition to their normal work load.

Costs

The Leonardo project will commence in mid 1996. The Museum is funding initial development from Private Trust Funds. Staff will be involved with planning, selecting and organising materials for inclusion in the project, digitising it and providing text to images.

The Museum has dedicated 0.75 FTE Level 4, 3rd Year \$32 362 per annum inclusive of overheads (15%) to the project. Additional costs for software, programming, legal fees and LAN connection are estimated to be \$30 000 for 1996/97. Total cost for the duration of the agreement is estimated at \$93 543.

VA 2 : EXHIBITION DEVELOPMENT

Description

The Museum aims to develop and install new permanent exhibitions to interpret the natural and cultural heritage of the State. It will also continue to attract and accept a wide variety of travelling exhibitions of national and international origin, which interpret other aspects of the world's natural and cultural heritage.

Benefits

- Provision of enjoyment and information to the community at large through contact with the natural and cultural heritage of Western Australia and of the World.
- Advances knowledge about the natural and cultural heritage of Western Australia and the World.
- Staff are committed to provide services required in addition to their normal work load at no extra cost to the organisation.
- Savings are achieved by reallocating duties and non appointment of staff endorsed by Corporate Executive and staff.

Costs

An annual allocation of \$90 000 will be made to an exhibitions development fund, to benefit all WA Museum sites.

Total cost for the duration of this agreement—\$135 000.

VA 3 - WA MUSEUM FOUNDATION

Description

The WA Museum Foundation has been established to assist the Trustees in promoting and implementing the Museum's vision, mission and objectives whilst minimising the cost to Government. It will achieve this by raising funds from business and the local community, and providing other benefits to the WA Museum.

Benefits

- Provision of consolidated sponsorship and other fund raising strategies for the WA Museum.
- The ability to encourage and demonstrate public support for the Museum and its programmes.
- Promotion of the Museum to persons in Government, business, media and community organisations.
- Staff and members of the community (Museum Trustees) released to carry out the above functions in their spare time.
- Staff are committed to provide services required in addition to their normal work load at no extra cost to the organisation

Costs

The Museum has dedicated 0.5 FTE Level 5, 4th Year and 0.3 FTE Level 2, 5th Year to the provision of administrative support for the Foundation.

Total \$36 755 per annum inclusive of overheads (15%), \$55 132 for the duration of this agreement.

VA 4 - CULTURAL TOURISM

Description

As part of the enhanced collaboration between cultural agencies recommended by the Cox Report, the WA Museum has become the lead agency in developing cultural tourism and international marketing programmes for the Arts Portfolio. A range of strategic initiatives in the areas of cultural tourism, international cultural exchange and trade will be implemented. New alliances for the cultural sector will be developed with Government agencies and industry. A major focus will be activation of the recommendations of *The Cultural Landscape* (the Cultural Tourism action plan 1996—1998) as endorsed by the Premier, the Board of the Tourism Commission and the Minister for the Arts.

Benefits

- Development of cultural tourism, export and international exchange policies for the cultural industry of Western Australia.
- Formulation and management of strategies for cultural tourism, market development and international exchange between Arts and Tourism Portfolios.
- Establishment and direction of inter-disciplinary working parties, ie of tourism, trade, industry, arts and government representatives.
- Collaboration with the WA Tourism Commission to establish an inter-agency mechanism to foster the arts into future WA Tourism Commission international marketing initiatives.
- Staff are committed to provide services required in addition to their normal work load at no extra cost to the organisation.

Costs

The cost of establishing an office within the WA Museum to promote cultural tourism, international cultural exchange and trade is estimated to be \$16 000 per annum, \$24 000 for the duration of this agreement.

VA 5 - EXTENDED OPENING HOURS

Description

The Trustees of the WA Museum and the Minister for the Arts are seeking to improve access to the Museum's sites by opening them at times convenient to the public.

At the Perth Museum, opening hours on Sundays have been extended from 1.00 PM—5.00 PM to 10.30 am to 5.00 PM.

The Fremantle History Museum in Finnerty St, Fremantle is now open from 10.30 am—4.00 PM Monday to Wednesday. Prior to December 1995 it did not open on these days. In addition, opening hours on Thursday and Friday have been extended from 11.00 am—4.00 PM to 10.30 am—4.00 PM.

Benefits

- The Perth Museum is now open on Sunday mornings. The Fremantle History Museum is now open every day of the week.

- The ability to open the Museum for longer hours is made possible through staff commitment and rationalisation of current roster systems.

Costs

Perth Museum	Sunday opening	\$20 455
Fremantle History Museum		\$30 684
		\$51 139

Inclusive of overheads (15%), \$58 810 per annum, \$88 216 for the duration of this agreement.

**NELSON POINT AND FINUCANE ISLAND
CAPACITY EXPANSION PROJECT—PORT
HEDLAND AGREEMENT 1997-1998.
No. AG 166 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cavlec Electrical Engineering Services Pty Ltd & another
and

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch and others.

No. AG 166 of 1997.

Nelson Point and Finucane Island Capacity Expansion
Project—Port Hedland Agreement 1997-1998.

19 August 1997.

Order.

HAVING heard Mr D.R. Sproule as agent for the Applicants and Mr G.C. Sturman as agent for the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, Mr C.F. Young as agent for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and there being no appearance on behalf of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australia Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 1st day of August, 1997 entitled Nelson Point and Finucane Island Capacity Expansion Project—Port Hedland Agreement 1997-1998 be registered as an industrial agreement.

[L.S.]

(Sgd.) G. L. FIELDING,
Senior Commissioner.

Schedule.

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PRE-AMBLE

The rates and conditions of employment contained in this Agreement recognise that the major project construction work being undertaken at Nelson Point and Finucane Island is undertaken at the same time as the overall major construction activity applicable on BHP facilities in Port Hedland.

SECTION ONE—ADMINISTRATION OF THE
AGREEMENT

1.1 Title

This Agreement shall be known as the Nelson Point and Finucane Island Capacity Expansion Project—Port Hedland Agreement 1997—1998.

1.2 Parties

The parties to this Agreement are the following employers (herein referred to as the employers or employer) undertaking work on the project as a common enterprise through association with the project managers Fluor Daniel Pty Ltd and Sinclair Knight Merz Pty Ltd—

Cavlec Electrical Engineering Services Pty Ltd;
United Construction Pty Ltd;

and the following organisations of employees and their members undertaking work within the scope of this Agreement—

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

Construction, Mining, Energy, Timber Yards, Sawmills and Woodworkers Union of Australia, Western Australia Branch

The number of employees covered by this Agreement at the date of Agreement was 30.

1.3 Scope of Agreement

This Agreement shall apply to all of the construction work, undertaken by the employers on site at Nelson Point and Finucane Island in Port Hedland as part of the Capacity Expansion Project as managed by Fluor Daniel Pty Ltd or Sinclair Knight Merz Pty Ltd, by employees engaged full time on site under the terms and conditions of the following Awards—

- Electrical Contracting Industry Award
- Metal Trades General Award Part II Construction
- Engine Drivers (Building & Steel) Construction Award

in classifications relevant to the construction of this project.

1.4 Period of Operation

Unless otherwise provided for in this Agreement the terms of this Agreement shall come into operation and apply on and from the date of agreement between the parties being 1 May 1997 and shall continue in operation until the completion of construction work on the project, expected to be in December 1998.

1.5 No Extra Claims

This Agreement is made in full and final settlement of all claims with respect to terms and conditions of employment in relation to this project and the parties to this Agreement shall

not make any further claims with respect to this project for the period of operation of this Agreement.

The package of rates and conditions contained in this Agreement are recognised by the parties as covering all circumstances and disabilities of major construction work covered by this Agreement from commencement through all phases to practical completion.

1.6 Not To Be Used As A Precedent

This Agreement shall not be used in any manner whatsoever as justification to obtain similar arrangements or benefits on any other works, project, plant or enterprise.

Specifically the terms of this Agreement will not be used as a basis for claims on any other construction work that may be undertaken in relation to BHP Iron Ore Pty Ltd operations at Nelson Point and Finucane Island.

SECTION TWO—EFFICIENCY MEASURES

2.1 Objectives

This Agreement is designed to enable the project managers, employers, their employees and their union(s) to co-operate with the objective of ensuring a safe, successful and timely completion of work on the project.

All parties are committed to—

- providing high standards of occupational health and safety on the site;
- promoting, and co-operating in achieving, the best use of employee skills in constructing the project;
- eliminating industrial relations lost time by the resolution of conflicts in accordance with agreed procedures;
- achieving a productive and efficient working environment on the project;
- facilitating a co-operative approach to employment relationships;
- taking steps to improve and enhance communication between employees and management/supervisors; and
- to individually and collectively recognise the responsibility to respect and care for the environment in which we work.

Should during the life of this Agreement any changes to the project works be required to ensure these objectives are attained, all parties are committed to participate as requested in a process of consultation and co-operation to discuss and agree on the implementation of such measures as may be required.

2.2 Utilisation of Work Skills

The parties to this Agreement are committed to co-operate positively to encourage the best utilisation of workforce skills in the construction of this project.

The following commitments are made on this basis—

That employees will carry out all directions and duties that are within the scope of their skills and training, whilst ensuring that safety and quality requirements of the project are maintained.

Employees will comply with any reasonable request to work overtime within the requirements of the project at the appropriate rate as prescribed in the relevant award. Unions party to this Agreement will not impose any ban or limitation on the working of such overtime.

Where shift work is required, the unions will not place any restrictions or limitations on such shift work, and employees will agree to work such shift work as reasonably required by the employer.

2.3 Agreement Best Practice Processes

Avoidance of Industrial Disputes

2.3.1 Intent

Consistent with this Agreement's objectives, the parties are committed to exhausting to finality the procedures outlined in this Agreement to resolve issues, difficulties and questions arising on the project.

2.3.2 Goal

On completion of this Agreement a project goal is to have a dispute free construction and commissioning phase by resolving grievances without the need to resort to strike action,

lockouts or any other form of ban or limitation on the performance of work.

2.3.3 Awareness

It is the view of the parties that all employers and employees are well versed in the processes available in this Agreement to resolve grievances and in that regard project consultation and communication processes will be used to ensure all concerned are aware of the requirements of this clause.

2.4 Project Consultation and Communication

In order to assist to achieve a harmonious working relationship and to assist to ensure that the construction program set for the project is maintained, regular and ongoing consultation between the employer and the employees will be required to ensure co-operation is provided.

The employer will ensure that supervision informs employees who are to carry out the various elements of the contract, what is to be done, what work methods, materials and tools are to be used and what specific hazards may be encountered.

Employees are to be encouraged to contribute to this process with the view of contributing to ensure that work on the project is undertaken in the most safe and productive manner and to the highest quality standards.

2.5 Essential Works Procedure

It is recognised by the parties to this Agreement that the work covered by this Agreement will include certain essential works.

Work that is undertaken on the operating plant at Nelson Point or Finucane Island which involves work to ensure the plant continues operation, such as emergency repair or rectification work, or work that involves the preparation for and partial shutdown of the plant to allow alterations or additions to the plant, is the work described as essential work.

It is the objective of the parties that the essential work will be carried out uninterrupted.

To assist in the objective to help eliminate industrial action that may directly or indirectly effect the carrying out of essential work the parties will strictly adhere to the dispute settlement procedures in clause 2.6.1.

2.6 Disputes Resolution Procedures

In the resolution of industrial issues in relation to employees covered by this Agreement the parties agree that—

Action will not be taken by employees party to this Agreement that will disrupt the normal operational activities of BHP Iron Ore Pty Ltd operations external to the Capacity Expansion Project and further, it is the intention of the parties to this Agreement to ensure that any industrial dispute that may occur should not interrupt the normal production operations of BHP Iron Ore Pty Ltd;

employees covered by this Agreement should not become involved in support of issues raised on the HBI Project, or BHP Iron Ore Pty Ltd production operations because any issue raised will be considered and dealt with specific to the circumstances of the Capacity Expansion Project.

Any issue or concern shall be subject to the following procedure—

2.6.1 Steps to Resolve Questions, Disputes or Difficulties

- (i) The employee concerned and if requested by the employee, his/her shop steward will raise the matter with the immediate supervisor for resolution.
- (ii) If not resolved, the employee and his/her shop steward concerned shall raise the matter with the next more senior on site manager of the employer for resolution.
- (iii) If not resolved, the employee and his/her shop steward may involve the appropriate local union organiser who shall attempt to seek a solution with the employers senior site manager and the employers representative (CCIWA).
- (iv) If not resolved, the matter may be referred to the appropriate Perth based full time union official who will discuss the matter with

senior management of the company and their representative.

- (v) If still not resolved, either party may refer the matter to the Western Australian Industrial Relations Commission for the State Agreement.

Sensible time limits shall be allowed to resolve the matter during steps (i) to (iv) of the procedure.

While the above process is being pursued, work shall continue as normal. The emphasis will be on an agreed settlement of an issue so as to avoid lost time and the loss of the Incentive Payment provided for in Clause 3.4 of this Agreement, which would be forfeited in any week industrial action occurs.

Where any questions, disputes or difficulties arise under the Award or this Agreement, the provisions of this clause shall be applied in resolving these matters.

2.6.2 Authorised Meetings

- (i) It is recognised that from time to time the union(s) may wish to convene workforce meetings to discuss or report on relevant issues relating to the project.
- (ii) Where such meetings are convened by the unions(s) they shall occur at the most convenient time so as not to interrupt the work programme, i.e. prior to commencement of work, shift breaks, smoko or lunch break.
- (iii) The location of the meeting shall be outside the site for safety requirements.
- (iv) Meetings which are likely to intrude into working hours will need to be agreed by the employer concerned to prevent the loss of the Incentive Payment as prescribed in Clause 3.4 of this Agreement.
- (v) Agreement to hold authorised meetings will not be unreasonably withheld provided the following conditions are met—

A request indicating the purpose of the meeting is made by an officer of the relevant union to the employer.

Notice, preferably 24 hours prior to the intended meeting, shall be given to the employer to consider the request and respond.

A reasonable time limit will be agreed.

Any agreed meeting during working hours will be unpaid.

The union will advise the workforce that the meeting is authorised for the purpose of the Incentive Payment.

Should normal work not resume after the meeting, the Incentive Payment will be forfeited.

- (vi) Any meeting not agreed by the employer concerned will result in the loss of the Incentive Payment.

2.6.3 Review Process

The parties will meet periodically to review the application of this Clause to determine its effectiveness and whether reinforcement of the correct procedures to be followed is deemed necessary.

2.7 Demarcation Procedures

- (i) In the event that two or more unions compete for the same work and an issue of demarcation arises, the unions agree that the issue will be resolved off site through the appropriate union processes without disruption to work.
- (ii) While these processes are being followed, the employer shall allocate the work on the on site pre-dispute basis and the status quo shall remain until the issue has been resolved.
- (iii) No party shall be prejudiced as to final settlement by the continuance of work on the pre dispute basis.

- (iv) If the unions are unable to resolve the demarcation, they shall refer the matter to the appropriate Industrial Relations Commission without recourse to industrial action, for resolution.

2.8 Site Security and Safety Requirements

All parties to this Agreement acknowledge the importance of complying with and observing all security and safety rules and regulations set down for the project, particularly in the environment of major construction work being undertaken in an operating plant.

SECTION THREE—WAGES ALLOWANCES AND EMPLOYMENT CONDITIONS

3.1 Application of Awards

Except as provided in this Agreement, the terms and conditions of employment of each employee covered by this Agreement shall be in accordance with the relevant industrial Award.

Where any provision of this document is inconsistent with the provisions of any relevant Award, then the provisions of this document shall apply.

However, if a matter is not covered by this document then all conditions of employment shall be in accordance with the relevant Award.

3.2 Wage Rates

Employees bound by the terms of this Agreement shall be paid the wage rates shown below on and from the dates indicated according to their classification as per the relevant Award. Any future changes in Award rates will not affect these agreed schedules.

(A) Metal Trades (General) Award 1996—Part II Construction

Classification	1/1/97	1/4/97	1/10/97	1/4/98	1/10/98
Instrumentation and Controls Tradesman	715.82	737.00	758.82	781.29	804.44
Instrumentation Tradesman—Complex Systems	656.31	675.71	695.69	716.27	737.47
Instrument Tradesman	642.40	661.38	680.93	701.07	721.81
Scientific Instrument Maker	642.40	661.38	680.93	701.07	721.81
Welder—Special Class	631.68	650.34	669.56	689.36	709.75
Welder	621.20	639.55	658.45	677.91	697.96
Electrician Special Class	656.31	675.71	695.69	716.27	737.47
Electrical Fitter	621.20	639.55	658.45	677.91	697.96
Electrical Installer	621.20	639.55	658.45	677.91	697.96
Boilermaker	621.20	639.55	658.45	677.91	697.96
Tradesman the greater part of whose time is occupied in marking off and/or template making	626.38	644.88	663.94	683.57	703.79
Mechanical Tradesman—Special Class	656.31	675.71	695.69	716.27	737.47
Tradesperson	621.20	639.55	658.45	677.91	697.96
Pipe Fitter	621.20	639.55	658.45	677.91	697.96
Certificated Rigger or Scaffolder	576.52	593.82	611.63	629.98	648.88
Rigger or Scaffolder—Other	561.49	578.33	595.68	613.56	631.97
Tool and Material Storeman	544.61	560.95	577.78	595.11	612.96
Tradesperson's Assistant	527.12	542.93	559.22	576.00	593.28
Tradesman's Assistant—who from time to time uses a grinding machine	530.82	546.74	563.14	580.04	597.44
Lagger—					
First 6 months' experience	526.01	541.79	558.04	574.79	592.03
2nd & 3rd 6 months' experience	530.33	546.24	562.63	579.50	596.89
4th & 5th 6 months' experience thereafter	535.74	551.81	568.36	585.42	602.98
thereafter	538.82	554.98	571.63	588.79	606.45
Grinder using portable machine	535.87	551.95	568.51	585.56	603.13
Crane Attendant and Dogman	561.49	578.33	595.68	613.56	631.97
Labourer	501.50	516.55	532.05	548.00	564.44

* Tool Allowance is included in the weekly rate. If not paid because tools are provided, weekly rate should be reduced by \$9.70

(B) Electrical Contracting Industry Award

Classification	1/1/97	1/4/97	1/10/97	1/4/98	1/10/98
Level 1					
(i) * Electronics Tradesman	742.84	764.84	787.50	810.84	834.88
Level 2					
(i) * Electrician—Special Class	670.89	690.73	711.17	732.22	753.90
(ii) * Instrument Fitter/ Electrical Grade 2	680.38	700.51	721.24	742.59	764.58
Level 3					
(i) * Electrical Installer	641.08	660.03	679.55	699.65	720.35
(ii) * Electrical Fitter	641.08	660.03	679.55	699.65	720.35
(iii) * Instrument Fitter/ Electrical Grade 1	662.77	682.37	702.56	723.35	744.77

Classification	1/1/97	1/4/97	1/10/97	1/4/98	1/10/98
(iv) Linesman—Grade 1 (i.e. with not less than 3 years experience as a Linesman)	631.58	650.53	670.05	690.15	710.85
(v) Cable Joiner	631.58	650.53	670.05	690.15	710.85
Level 4					
(i) Linesman—Grade 2 (i.e. with not less than 3 years experience as a Linesman)	609.41	627.69	646.52	665.92	685.90
Level 5					
(i) Electrical Assistant	542.15	558.41	575.16	592.41	610.18

- * (i) A Tool Allowance of \$9.50 per week has been added to the above rates where applicable to make up the weekly all purpose rate. If this allowance does not apply, the rate should be reduced accordingly. In addition, a licence allowance of \$14.00 per week, where applicable is to be added to the above rate for all purposes.
- (ii) A flat per week amount of \$19.70 is to be paid as per the provisions of Clause 27 of the Award for all classifications above.

(C) Engine Drivers (Building and Steel Construction) Award

Column A

Large Industrial Undertaking

Large Civil Engineering Project

or Multi-Storey Building Work

Classification	1/1/97	1/4/97	1/10/97	1/4/98	1/10/98
0—8 tonnes	571.60	585.10	598.50	612.00	625.40
8—15 tonnes	584.20	598.00	611.80	625.50	639.30
15—40 tonnes	594.90	609.00	623.00	637.00	651.00
40—80 tonnes	603.40	617.60	631.80	646.10	660.30
80—100 tonnes	609.80	624.20	638.60	652.90	667.30
100—140 tonnes	619.30	634.00	648.60	663.20	677.80
140—180 tonnes	631.90	646.90	661.80	676.70	691.70
180—220 tonnes	648.80	664.10	679.50	694.80	710.20
Over 220 tonnes	670.70	686.60	702.50	718.40	734.20
Tower Crane	624.10	638.90	653.60	668.40	683.10

Above rates do not include Location Allowance.

3.3 Allowances

3.3.1 Site Allowance

A site allowance of \$3.75 per hour for each hour worked shall be paid to each employee on the project bound by this Agreement in recognition of all the disabilities associated with work to be performed on construction activities in the North West of Western Australia including but not limited to heat, height, dust, dirty work and extremes of terrain. This allowance shall be applicable on and from 1 January 1997; and is paid in lieu of all award special rates contained in the relevant award unless otherwise provided for in this clause.

3.3.2 Confined Space

- (i) Where an employee is required to work in a confined space by their employer, the employee shall be paid a flat allowance of \$0.45¢ per hour for each hour worked or part thereof.
- (ii) This allowance shall be in addition to any other allowance payable under this Agreement.
- (iii) For the purpose of this clause, confined space means a space the dimensions or nature of which necessitates working in an unusually cramped or stooped position for the calling or trade concerned. An example of this may be work undertaken within small chutes and confined areas within large chutes.

3.3.3 Welding Related Allowances

- (i) Welders qualified and required to carry out coded welding work in accordance with nominated welding standards shall be paid an all purpose allowance for the following codes at the rate of—
 - (a) \$45.00 per week if engaged on welding of pipes or vessels to AS 1210 standard or equivalent; or
 - (b) \$35.00 per week if engaged on stainless steel or chrome molly pipe welding to ANSI B-31-3 or AS 4041 standard; or
 - (c) \$25.00 per week if engaged on other pipe welding to ANSI B-31-3 or AS 4041 standard; or
 - (d) \$15.00 per week for arc welding on structural steel falling into categories of XP or SP as defined in AS 1554.

- (ii) There shall be no double counting of these allowances, only the highest is payable if an employee qualifies for more than one.

3.3.4 Cranes with Lifting Capacity in Excess of 300 Tonnes

Where an employee is engaged in the operation of a crane with a lifting capacity in excess of 300 tonnes, they shall be paid the relevant award rate with an additional payment of \$5.30 per week for each 20 tonnes of lifting capacity in excess of 300 tonnes.

3.4 Agreement Incentive Payment

- (i) In reaching this Agreement, the parties acknowledge the level of the contribution each employee will need to make to ensure the successful completion of the project.
- (ii) This contribution will be recognised where an employee is ready, willing and available to work as directed the usual 54 hours Monday to Saturday and including additional overtime that may be regularly rostered to meet project requirements. Employees engaged on shift work who work as directed by their employer shall work not less than 54 hours per week over his/her rostered working week.
- (iii) An employee who is ready willing and available to work the usual 54 hours as directed will accrue an incentive payment of \$140.00 per week.
- (iv) This accrual will continue to apply during any absence on either paid leave or authorised unpaid leave to a maximum of four weeks (including workers compensation to a maximum of two weeks), notwithstanding the absence on leave.
- (v) Entitlement to this incentive payment will be forfeited in any week including hours worked beyond the regularly rostered overtime hours in which an employee engages in any form of industrial action including stoppages, unauthorised stop work meetings, bans or limitations.
- (vi) In the event of a disagreement over the forfeiture of the incentive payment as provided in (v) above, a union party to this Agreement may refer the matter to the Western Australian Industrial Relations Commission for issue covered by this State Agreement.
- (vii) An employee who is absent in any week other than as provided in paragraphs (iv) and (v) above, shall only be entitled to accrue the incentive payment based on 50% of the weekly rate.
- (viii) Subject to (v) above, an employee commencing or terminating employment with their employer after the beginning of a week shall accrue the incentive on the basis of the number of days worked within that week, paid at the rate of 1/6th of the weekly incentive payment.
- (ix) An employee who works in excess of 54 hours including regularly rostered additional overtime shall accrue an additional \$2.59 per hour for each hour so worked.
- (x) An employee may make a prior arrangement with their employer not to work beyond 5 hours on Saturday for any reason.
- (xi) Where overtime is withdrawn by the employer this payment is accrued for the usual 54 hours that the employee was ready, willing and available to work, Monday to Saturday.
- (xii) The incentive shall become due and payable only on cessation of the employees employment on the Project with the employer.
- (xiii) This payment shall be in addition to any award prescription relating to redundancy or severance payments that may otherwise be payable. Further, this payment shall be applicable on and from 1 January 1997.

3.5 Living Away From Home Allowance

- (i) Where an employee is engaged or selected or advised by an employer to proceed to construction work on the project and the employee does so and that work is at such a distance that they cannot return to

their home each night, the employee shall be a distant worker. Where an employee is a distant worker, the employer shall provide suitable board and lodging or if the employer so elects, pay the employee an amount of \$364.00 per week as a living away from home allowance.

- (ii) An employee request to be paid the living away from home allowance in lieu of board and lodging will not be unreasonably withheld.
- (iii) The above provisions may not apply with respect to any industrial action that is for a duration of a full day or more or in respect to any industrial action that may be equivalent to 8 hours or more during the usual working week and in such a case, the employer may deduct from moneys owing to the employee an amount equivalent to the board and lodging for the period of the absence or deduct on a pro-rata basis at the rate of one seventh (1/7th) of the living away from home allowance for each day that the employee is not ready, willing and available for work.
- (iv) Any dispute over the status of an employee to determine whether this allowance is payable shall be referred to the Western Australian Industrial Relations Commission for the State Agreement.

3.6 Ex-Gratia Local Living Subsidy

- (i) Local employees who are engaged by construction contractors on the project continuously for one week or more shall receive an ex-gratia local living payment of \$230.00 per completed week of service on the project.
- (ii) This payment is paid in lieu of any other payment made by an employer to an employee in respect of location, living and accommodation related expenses and shall not apply in respect to any period of absence other than periods of paid leave or authorised unpaid leave.
- (iii) Where an employee undertakes any form of industrial action that is for a duration of a full day or more or the equivalent to 8 hours or more during the usual working week, the employer may deduct the allowance prescribed in this clause. Such deduction shall be at the rate of one seventh (1/7th) of the prescribed allowance for each day that the employee is not ready, willing and available for work.

3.7 Rest and Recreation Leave

- (i) Distant employees who qualify for rest and recreation leave in accordance with this Agreement shall have the period of continuous service on site reduced to 7 weeks in lieu of the award prescription before being entitled to the leave.
- (ii) The R & R leave shall be taken as soon as practicable as agreed between the employer and employee.
- (iii) Employees who qualify for the provisions of this subclause may return to their home or to Perth or any other place mutually agreed between the employer and employee at Christmas and Easter—
 - (a) by taking the entitlement to R & R prior to the completion of the next accrual period; or
 - (b) by taking R & R in advance but, if by service subsequent to the taking of R & R an entitlement to that R & R does not accrue, any payment of ordinary pay for the period of R & R and the cost of air fares shall be refunded to the employer unless the services of the employee are terminated by the employer through no fault of that employee. For the purposes of this provision, the employer may deduct any amount to be refunded from any moneys otherwise due to the employee under their contract of employment.
- (iv) Accrued rostered days off where that method of working the 38 hours week is in place, may be taken concurrently with the period of R & R leave.
- (v) Any period of employment in respect of which an employee has an unauthorised absence of one day or

more shall not count towards determining the employees rights to travel and leave under this subclause.

- (vi) For the purposes of this subclause, a return air fare to Perth shall be the prevailing economy Perth—Port Hedland and return air fare available to the employer ie. currently \$596.00.

3.8 Daily Travel Payment

- (i) In recognition of the costs associated in travelling to the project, an employee performing work to which this Agreement applies shall be paid a travel allowance of \$15.30 per day in lieu of the prescribed amount in the relevant Award.
- (ii) This allowance is not payable where the employer provides the transport.
- (iii) No party to this Agreement shall seek to flow this allowance to any other operations of the respondent employers.

3.9 Agreement Conditions

3.9.1 Rostered Days Off (Local Employees)

Notwithstanding the provisions of the relevant Award, locally hired employees whose working hours arrangements enable a rostered day off to be taken during the work cycle, shall take such a day off by prior notification to the employer or accrue up to 5 days in one year unless agreed by the employee to accrue additional days.

3.9.2 Hours of Work/Meal Break

- (i) Notwithstanding the provisions of the relevant Award, starting times of the ordinary working hours shall be within a spread of hours between 6.00am and 6.00pm.
- (ii) To facilitate a more productive working day, this spread may be altered by an agreement between the employer and majority of employees directly involved and where appropriate the relevant union.
- (iii) The employer may stagger the meal break to meet operational requirements but no employee shall be compelled to work more than six (6) hours from the commencement of the employees ordinary hours without a meal break.

3.9.3 Shift Work

- (i) The employer may require employees to work shift work and the employee shall work shift work as required provided the employee is given one weeks notice of intention to do so including the intended starting and finishing times of the respective shifts.
- (ii) The loading for night shift work shall be in accordance with the relevant award.
- (iii) Furthermore, for employees bound by the Metal Trades (General) Award Part II Construction and the Electrical Contracting Industry Award, a flat loading of 25% of the ordinary rate shall apply for each hour worked beyond the ordinary hours on the night shift.
- (iv) Except as provided in this Clause, the provisions of the relevant Awards shall apply.

3.9.4 Project Clothing and Footwear

- (i) Each employee on commencement of work on the project shall be supplied free of charge by their employer one pair of safety boots, three sets of clothing comprising of either trousers or overalls and three shirts unless the same employer had within the last 2 months prior to commencement on site supplied such issue to the employee and that issue is in good condition.
- (ii) Safety footwear shall be replaced on a fair wear and tear basis while the clothing shall be a yearly issue or on a fair wear and tear basis for selected items provided the worn out clothing is produced and handed in to the employer as proof of requirement.

3.9.5 Journey Cover

As a term of this Agreement, award employees bound by this Agreement shall be provided by their employer at no cost to themselves, journey cover insurance.

3.9.6 Sick Leave

- (i) On lawful termination of employment, an employee with sick leave which has accrued during the course of employment on the project and has not been taken, shall be paid the amount of outstanding sick leave hours on the basis of 1/6th of a week's pay, at the ordinary rate of pay for that employees classification as provided in Clause 3.2 of this Agreement, per month of service.
- (ii) The provisions of this subclause do not apply to casuals.

3.9.7 Overtime

- (i) In accordance with the relevant Award, the employer will require employees to work reasonable overtime including regularly rostered additional overtime.
- (ii) Having regard for the provisions of Clause 3.4(x), the employers will establish a procedure to facilitate employees who may choose not to work the regularly rostered additional overtime hours; provided however that an employee will be required to work at least 5 hours on the Saturday.
- (iii) Withdrawal of Overtime
 - (a) The employer shall not, without good reason and without a minimum of two hours notice within ordinary hours (Monday to Friday) and three hours notice (Saturday and public holidays) withdraw regular overtime. Periods of notice shall be within the rostered working day or for the minimum period at the commencement of work on an overtime shift.
 - (b) The employer may withdraw overtime without notice in the case of any industrial action which affects the project. Industrial action shall include strikes, bans, limitations or any other form of industrial restriction.
- (iv) Subject to paragraph (iii) above, no party to this Agreement will restrict the working of overtime which may be necessary for the employers to meet their project requirements. The practice of "one in all in" overtime will not apply on the Project. Overtime will be rostered on a fair and equitable basis as far as is practicable.

3.10 Cyclone Procedures

- (1) The following shall apply when, because of a cyclone, the employer stands down employees employed under this Agreement.
- (2) Each employee who—
 - (a) at the commencement of the cyclone period reports for and remains at work until otherwise directed by the employer; and
 - (b) following the "all clear" resumes duty in accordance with the direction of the employer;
 shall be paid for the normal rostered ordinary time and overtime hours occurring during the stand down.
 - (c) Notwithstanding the provisions of this subclause, an employee who prior to the stand down due to a cyclone has commenced an overtime shift shall be paid what would have been earned on that shift but for the stand down.

- (3) An employee who, on any day during the cyclone stand down—

- (a) is required for work and is requested to do so by his/her employer; and
- (b) is not willing or available to work when so requested

is not entitled to pay for that day.

- (4) An employee who is required to remain at or who is called out to work during the period of time in which the operation has been stood down during a cyclone shall be paid for all time worked at single time in addition to the rate he/she would have received other than for the cyclone.

- (5) (a) After the "all clear" has been given each employee shall be notified by the employer of—
 - (i) the time at which normal operations are to resume; and
 - (ii) the time at which employees are to resume work; and

an employee who does not present for work at the time referred to in subparagraph (ii) is in respect of that day only, entitled to payment for time worked.

- (b) The notification to be given by the employer to the employee pursuant to paragraph (a) of this sub-clause may be per medium of written notice or by special announcement broadcast by radio and/or television provided that such an announcement is repeated at not less than hourly intervals on at least two occasions prior to the then stated time at which normal operations are to be resumed.
- (6) (i) Where, on the day following the resumption of normal operations or on any subsequent day an employee cannot, because of damage caused to the operations by the cyclone be usefully employed, the employer shall confer with the relevant union official on the likely duration of the inability to commence useful work. Subject to any alternative arrangement agreed between the parties, an employee shall be paid 8 hours at ordinary rates per day to a maximum of 3 days if useful work is not available before the employer invokes standing an employee down without pay. However, before any decision to stand down an employee without pay is made there shall be prior discussion with the relevant union.
- (ii) If an employees mobilisation to site is delayed because of cyclone conditions or associated to the cyclone conditions and the employee remains available for mobilisation, the employee shall be paid 8 hours at ordinary rates per day to a maximum of 3 days.
- (iii) If an employee is demobilised to their point of hire and is requested to hold themselves in readiness the employee shall be paid 8 hours at ordinary rates per day up to a maximum 38 ordinary hours.
- (iv) The above provisions do not prevent the employer from terminating the employment of an employee due to the inability to provide useful work as a result of a cyclone.

APPENDIX A—SIGNATORIES

EMPLOYERS

CAVLEC ELECTRICAL ENGINEERING SERVICES
PTY LTD

Indecipherable (signed)
Signed

Dated: 31 / 7 / 1997 A.C.N.: 009229734

UNITED CONSTRUCTION PTY LTD

Brad Wir (signed)
Signed

Dated: 17 / 6 / 1997 A.C.N.: 060569977

UNIONS

AUTOMOTIVE, FOOD, METALS, ENGINEERING,
PRINTING AND KINDRED INDUSTRIES UNION OF
WORKERS, WESTERN AUSTRALIAN BRANCH

J. Sharp-Collett (signed)

Signed

Dated: 18 / 6 / 1997 Union Seal:

COMMUNICATION, ELECTRICAL, ENERGY, IN-
FORMATION, POSTAL, PLUMBING AND ALLIED
WORKERS UNION OF AUSTRALIA, ENGINEERING
AND ELECTRICAL DIVISION, WA BRANCH

indecipherable (signed)

Signed

Dated: 29 / 7 / 1997 Union Seal:

CONSTRUCTION, MINING, ENERGY, TIMBER-
YARDS, SAWMILLS AND WOODWORKERS UNION
OF AUSTRALIA, WESTERN AUSTRALIAN
BRANCH

indecipherable (signed)

Signed

Dated: 23 / 6 / 1997 Union Seal:

**PERTH COLLEGE (ENTERPRISE BARGAINING)
AGREEMENT 1997.
No. AG 125 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of
Western Australia, Industrial Union of Workers

and

Perth College.

No. AG 125 of 1997.

Perth College (Enterprise Bargaining) Agreement 1997.

23 July 1997.

Reasons for Decision.

THIS is an application for registration of an enterprise agree-
ment to replace an existing registered work place agreement
applying to teachers employed at a private school for girls,
Perth College. The Commission was told that since the regis-
tration of the previous agreement enterprise bargaining
discussions had progressed effectively at the school. The ap-
plicant union had continued to play an advisory role with the
negotiations being largely and effectively carried out on site.
The parties are to be congratulated on the outcome reached.
The application is approved with registration on and from the
date of hearing.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of
Western Australia, Industrial Union of Workers

and

Perth College.

No. AG 125 of 1997.

Perth College (Enterprise Bargaining) Agreement 1997.

4 August 1997.

Order.

HAVING heard Mr I Sands on behalf of the Applicant and Ms
L Papaelius on behalf of the Respondent now therefore I the

undersigned pursuant to the powers conferred under the In-
dustrial Relations Act, 1979 and by consent, do hereby order —

THAT the following schedule shall be and is registered
as an industrial agreement to be known as the Perth Col-
lege (Enterprise Bargaining) Agreement 1997 with effect
on and from the 23rd day of July 1997.

(Sgd.) S.A. CAWLEY,

Commissioner.

[L.S.]

Schedule.

1.—TITLE

This agreement shall be known as the "Perth College (En-
terprise Bargaining) Agreement 1997" and shall replace the
Perth College (Enterprise Bargaining) Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Expiration of Agreement
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Objectives
10. Salary Rates
11. Agreed Efficiency Improvements
12. Other Matters
13. Dispute Resolution Procedure
14. No further Claims
15. No Reduction
16. No Precedent
17. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between Perth College Incorporated
(the College) and the Independent Schools Salaried Officers'
Association of Western Australia, Industrial Union of Work-
ers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This agreement shall apply to teachers who are employed
within the scope of the Independent Schools' Teachers' Award,
1976 (the Award) by the College.

(2) The number of employees covered by this agreement is
74.

5.—DATE AND DURATION OF AGREEMENT

(1) This agreement shall come into effect on 10 July 1997
and shall apply until 31 December 1997.

(2) The parties agree to meet no later than six months prior
to the expiration of this agreement to review the agreement.

6.—EXPIRATION OF AGREEMENT

On expiration of this agreement and in the absence of the
registration of a subsequent agreement the provisions of this
agreement shall apply until such time as a new agreement is
registered and takes effect.

7.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction
with the Award.

Where there is any inconsistency between this agreement
and the Award, this agreement will prevail to the extent of the
inconsistency.

8.—SINGLE BARGAINING UNIT

(1) The parties to this agreement have formed a single bar-
gaining unit.

(2) The single bargaining unit has conducted negotiations
with the College and reached full agreement with the College
represented by this agreement.

9.—OBJECTIVES

The nature and purposes of this agreement are to—

- (1) Consolidate and develop further, initiatives arising
out of the award restructuring process.

- (2) Accept a mutual responsibility to maintain a working environment, which will ensure that the College and its staff become genuine participants and contributors to the College's aims, objectives and philosophy.
- (3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The College and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the College and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during College time and partly during the teachers' time.

10.—SALARY RATES

(1) The salary rates prescribed in Clause 11.—Salaries of the Award, as amended by Clause 10.—Salary Rates of the Perth College (Enterprise Bargaining) Agreement 1994 and by Clause 10.—Salary Rates of the Perth College (Enterprise Bargaining) Agreement 1996 are to be increased by a minimum of 5% with effect from 1 February 1997.

(2) In addition, the minimum allowance payable for a promotion position prescribed in Clause 11.—Salaries, subclause (7)(e) of the Award at Promotion Levels 1 and 2, Category A School, will be increased as per the following schedule.

As a consequence, the annual salary rates payable to the teaching staff will be—

STEP	1996	1 Feb 1997
Step 1	25,311	26,577
Step 2	26,850	28,192
Step 3	28,387	29,805
Step 4	30,161	31,669
Step 5	31,817	33,408
Step 6	33,235	34,897
Step 7	34,656	36,389
Step 8	36,429	38,250
Step 9	38,381	40,300
Step 10	39,978	41,977
Step 11	41,396	43,466
Step 12	43,171	45,330
Step 13	44,945	47,192
Responsibilities Allowance		
Level 1	6,742	8,113
Level 2	5,082	5,837
Senior Teacher Allowance		
Level 1	1,385	1,454
Level 2	3,115	3,271

(3) In the event of any safety net adjustment being applied to the Award, such adjustment shall be absorbed into the salary rates prescribed in this agreement.

11.—AGREED EFFICIENCY IMPROVEMENTS

(1) Payment of Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day and paid a daily rate or a pro-rata rate on the basis of the periods worked in relation to the number of periods in the particular school day.

(2) First Teaching Appointment

A teacher, who at the end of the initial twelve months of service, is deemed by the College not to have developed adequate teaching skills, may be appointed as a temporary teacher and subject to Clause 2.—Induction of Appendix 1 of the Award.

(3) Long Service Leave

From 1 January 1995, a teacher who has completed eight (8) years' continuous service with the College shall be entitled to take pro-rata long service leave on full pay, corresponding with a completed term.

(4) Promotion Positions

- (a) While maintaining the promotion structure described in the Award, the College shall have the discretion to adapt this structure to meet its educational needs. The

normal process of appointment to promotion positions will be followed.

- (b) Teaching staff appointed to promotion positions undertake to make whole school management a priority in addition to their own Departmental responsibilities.

(5) Professional Development

The College is committed to an extensive program of development in respect to Information Technology. Teaching staff are expected to support this commitment by undertaking continuing professional development outside of normal school hours with the aim of increasing individual computer literacy.

12.—OTHER MATTERS

The parties agree to discuss such matters that are of relevance to either the College or the staff.

13.—DISPUTE RESOLUTION PROCEDURE

(1) A dispute is defined as any question, dispute or difficulty arising out of this agreement—

(2) The following procedure shall apply to the resolution of such a dispute—

- (a) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.
- (b) If the parties are unable to resolve the dispute, the matter, at the request of either party, shall be referred to a meeting between the parties to the Agreement together with any additional representative as may be agreed by the parties.
- (c) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

14.—NO FURTHER CLAIMS

It is a condition of this agreement that the parties will not seek any further claims, with respect to salaries or conditions, unless they are consistent with the State Wage Case Principles.

15.—NO REDUCTION

Nothing contained herein shall entitle the College to reduce the salary or conditions of an employee which prevailed prior to entering into this agreement, except where provided by this agreement.

16.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the College or not.

17.—SIGNATORIES

_____ (signed)	_____ (signed)
(Signature)	(Signature)
<u>JUDITH COTTIER</u>	<u>T.I. HOWE</u>
(Name of signatory in block letters) Perth College Inc	(Name of signatory in block letters) Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

**RAPID METAL DEVELOPMENTS ENTERPRISE
BARGAINING AGREEMENT 1997.**

No. AG 165 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch

and

Rapid Metal Developments (Aust) Pty Ltd.

No. AG 165 of 1997.

Rapid Metal Developments Enterprise Bargaining
Agreement 1997.

27 August 1997.

Order.

HAVING heard Mr G.C. Sturman as agent for the Applicant and Mr D.R. Sproule as agent for the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 1st day of August, 1997 entitled Rapid Metal Developments Enterprise Bargaining Agreement 1997 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Rapid Metal Developments Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area, Scope and Parties Bound
4. Relationship to Other Awards
5. Term
6. Objectives
7. Continuous Improvements
8. Avoidance of Industrial Disputes
9. Wages
10. Journey Cover
11. Redundancies
12. Work Clothing

Signatories to Agreement

3.—AREA, SCOPE AND PARTIES BOUND

(1) This agreement shall apply to employees of Rapid Metal Developments (Australia) Pty Ltd who are, or eligible to be, members of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (“AMWU”)

(2) The parties to this Agreement are—

Rapid Metal Developments (Australia) Pty Ltd,
43 King Edward Road
Osborne Park WA 6017

The Automotive, Food, Metals, Engineering,
Printing and Kindred Industries Union of
Workers—Western Australian Branch
1111 Hay Street
WEST PERTH WA 6005

(3) This Agreement covers approximately eight employees.

4.—RELATIONSHIP TO OTHER AWARD

(1) This Agreement shall be read wholly in conjunction with the Metals and Engineering Rapid Metal Developments (Australia) Pty Ltd Award 1993 with respect to employees bound by that Award.

(2) Where there is any inconsistency between this Agreement and the aforementioned Award, this Agreement shall prevail to the extent of such inconsistency.

5.—TERM

(1) This Agreement shall operate from 1st July 1997 to 30th June 1999 and shall remain in force after that date until replaced, or either party withdraws from the Agreement.

(2) Not later than one month prior to the expiration of this Agreement, the parties will confer to assess renewal or otherwise of the document.

6.—OBJECTIVES

(1) The employers and employees agree that by consultation, mutual trust and improved quality of employment, productivity, competitive position and long term growth of Rapid Metal Developments will be gained.

(2) Short Term Objectives—

- (a) To increase productivity and efficiency thus enabling the company to achieve a reduction in the time taken to manufacture items.
- (b) To gain a commitment to continuous improvement.
- (c) To increase individual awareness and responsibility of quality.
- (d) To maximise flexibility.
- (e) To be more responsive to the needs of employees.

(3) Long Term Objectives—

- (a) To enhance the culture and attitudes of all employees, thereby creating a sense of pride and belonging to the company.
- (b) To examine the application of career paths for employees covered by this Agreement, with a view to increasing their skill levels and opportunities and their worth to the Company.
- (c) To increase competitiveness.
- (d) To improve job satisfaction.

7.—CONTINUOUS IMPROVEMENTS

The employer and all employees covered by this Agreement are committed to becoming actively involved in the Enterprise Bargaining Agreement.

8.—AVOIDANCE OF INDUSTRIAL DISPUTES

The parties will adhere to the provisions prescribed in the Appendix—Resolution of Dispute Requirements, of the Metals and Engineering Rapid Metal Developments (Aust.) Pty Ltd Award 1993.

9.—WAGES

Employees will receive three 5% wage increases, payable as follows—

WAGE GROUP	CURRENT RATE		RATE AT 1.7.97		RATE AT 1.7.98		RATE AT 31.12.98	
	Weekly Wage \$	Attendance Bonus \$	Weekly Wage \$	Attendance Bonus \$	Weekly Wage \$	Attendance Bonus \$	Weekly Wage \$	Attendance Bonus \$
C13	447.60	20.00	470.00	21.00	493.50	22.00	518.20	23.15
Leading Hand	468.00	20.00	491.40	21.00	516.00	22.00	541.80	23.15

10.—JOURNEY COVER

(1) The employer agrees to either reimburse or pay directly, the cost of premiums for insurance taken out by employees covered by this Agreement, for the purposes of providing journey cover to and from work.

(2) Such insurance will cover loss of wages, plus death and disability, up to a value of \$100,000.

11.—REDUNDANCIES

(1) In the event of redundancies taking place involving employees covered by this Agreement, the employer agrees to full consultation with the Union on the criteria for selection of surplus positions.

(2) Every effort will be made to minimise redundancies however, in the event that they do take place, a minimum of four weeks' notice will be given to all employees who are to become redundant.

12.—WORK CLOTHING

The employer will supply annually to employees covered by this Agreement the following—

- One pair of working boots.
- Two issues of work clothing.
- One winter jacket

SIGNATORIES TO AGREEMENT

For and on behalf of Rapid Metal
Developments (Australia) Pty Ltd indecipherable (signed)
25/7/97

For and on behalf of the Automotive,
Food, Metals, Engineering, Printing **Common Seal**
and Kindred Industries Union of
Workers—Western Australian J.Sharp-Collett (signed)
Branch 25/7/97

**STATE GOVERNMENT INSURANCE COMMISSION
(SGIC) ENTERPRISE BARGAINING
AGREEMENT 1997.
No. PSA AG 7 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of
Western Australia (Incorporated)

and

State Government Insurance Commission.

No. PSA AG 7 of 1997.

COMMISSIONER J. F. GREGOR.

22 August 1997.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. PSA AG 7 OF 1997

Having heard Ms L. Proud on behalf of the first named party and Mr G. Speight and with him Mr S. Majeks on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document titled State Government Insurance Commission (SGIC) Enterprise Bargaining Agreement 1997, filed in the Commission on 25 July 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J. F. GREGOR,
Commissioner.
[L.S.]

ENTERPRISE AGREEMENT 1997

Between

CIVIL SERVICE ASSOCIATION OF WESTERN
AUSTRALIA INCORPORATED

and

STATE GOVERNMENT INSURANCE COMMISSION

1.—TITLE

This Agreement shall be known as the “State Government Insurance Commission (SGIC) Enterprise Bargaining Agreement 1997”.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties to this Agreement
5. Number of Employees covered by this Agreement

6. Definitions
 7. Date and Period of Operation of this Agreement
 8. No Further Claims
 9. Relationship to the Parent Award and Agreements
 10. Single Bargaining Unit
 11. Implementation of Agreement
 12. SGIC Mission Statement
 13. Objectives and Principles
 14. Productivity Improvement
 15. Employee Grievance Resolution
 16. Dispute Settlement Procedures
 17. Consultation
 18. Salary
 19. Ceremonial/Cultural Leave
 20. Family Leave
 21. Parental Leave
 22. Annual Leave
 23. Long Service Leave
 24. Public Holidays
 25. Leave Without Pay
 26. Short Leave
 27. Study Leave
 28. Military Leave
 29. Witness and Jury Service
 30. Leave for International Sporting Events
 31. Sick Leave
 32. Part Time Work
 33. Child Care Arrangements
 34. Hours of Duty
 35. Higher Duties Allowance
 36. Overtime
 37. Availability of Agreement
 38. Time and Salaries Record
 39. Signatories of Parties to the Agreement
- Schedule A—Salaries
Schedule B—Productivity Improvement Plan
Schedule C—Overtime
Schedule D—Grievance Resolution Policy/Procedure

3.—SCOPE

This Agreement shall apply to all State Government Insurance Commission (SGIC) employees who are members of, or eligible to be members of, the Civil Service Association of Western Australia Incorporated.

4.—PARTIES TO THIS AGREEMENT

This Agreement shall be binding upon the following parties—

- (i) Civil Service Association of Western Australia Incorporated;
- (ii) The State Government Insurance Commission (SGIC);

5.—NUMBER OF EMPLOYEES COVERED BY THIS AGREEMENT

It is estimated that 160 employees will be covered by this Agreement upon registration.

6.—DEFINITIONS

“Agreement” means the State Government Insurance Commission (SGIC) Enterprise Bargaining Agreement 1997.

“Employee” means for the purpose of this Agreement, someone who is referred to at Clause 3.—Scope.

“Employer” means The State Government Insurance Commission.

“SGIC” means the State Government Insurance Commission.

“Union” means The Civil Service Association of Western Australia Incorporated.

“SBU” means the Single Bargaining Unit referred to at Clause 10—Single Bargaining Unit.

“Government” means The State Government of Western Australia.

“Minister” means The Minister or Ministers of the Crown responsible for the administration of the SGIC.

“Board” means the governing body of the State Government Insurance Commission.

“WAIRC” means The Western Australian Industrial Relations Commission.

“Award” means the Government Officers (State Government Insurance Commission) Award 1987.

“Workplace Delegate” means an employee elected from the financial membership of the Union who is appointed with the duties and responsibilities as detailed by those rules applicable to the Union.

“Workplace Deputy Delegate” means an employee elected from the financial membership of the Union who is appointed, in the absence of the Workplace Delegate, with the same duties and responsibilities of the Workplace Delegate.

7.—DATE AND PERIOD OF OPERATION OF THIS AGREEMENT

[a] This Agreement shall come into effect on 22 August 1997 and shall remain in force for a period of twelve (12) months from the date of registration.

[b] The parties will review this Agreement and commence negotiations for a new Agreement no later than three (3) months prior to the expiration of this Agreement.

[c] The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

[d] The pay quantum and conditions of employment achieved as a result of this Agreement will remain and form the new base pay rates for future Agreements, or continue to apply in the absence of a further Agreement, except where the Award rate is higher in which case the Award shall apply.

[e] This Agreement will continue in force after the expiry of its term until such time it is either replaced by another Agreement, or either of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC in such a form as is required by the Regulations of the WAIRC at that time.

[f] This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—NO FURTHER CLAIMS

The parties to this Agreement undertake that for the duration of this Agreement there shall be no further salary or wage increases sought or granted, except for those provided under the terms of this Agreement or provided for in a National or State Wage Case Decision.

9.—RELATIONSHIP TO PARENT AWARD AND AGREEMENTS

This Agreement shall be read and interpreted wholly in conjunction with the provisions of the Government Officers (State Government Insurance Commission) Award 1987 and Agreements which apply to the parties bound by this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

10.—SINGLE BARGAINING UNIT

[a] This Agreement has been negotiated through a Single Bargaining Unit (SBU) comprising of Employer and Union representatives.

[b] The SBU will review the terms and conditions of this Agreement three (3) months prior to the expiration of this Agreement to commence negotiations for a new Agreement.

[c] The SBU will review the Productivity Improvement Plan of this Agreement three (3) months prior to the expiration of this Agreement.

11.—IMPLEMENTATION OF AGREEMENT

The parties will develop an agreed process for the implementation of the initiatives outlined in this Agreement.

The SBU will be the peak forum to monitor, review and have input into the progress of the implementation of this Agreement and to actively share information and consult on corporate strategic issues affecting the SGIC business operation.

The SBU will consist of senior management, a Union Official and an employee representative from the Union.

12.—SGIC MISSION STATEMENT

To achieve best practice in—

[a] providing both Motor Vehicle Personal Injury and Industrial Disease Compensation Insurance; and

[b] managing the Western Australian Public Sector’s self-insurance arrangements;

through the promotion of risk management and the commitment and professionalism of its employees.

13.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are to—

- [a] Satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.
- [b] Achieve the SGIC’s Mission Statement and improve productivity and efficiency at the SGIC through ongoing improvements.
- [c] Promote the development of trust and motivation and to continue to foster enhanced employee relations.
- [d] Facilitate greater flexibility in decision making and allocation of human and other resources.
- [e] Promote increased satisfaction from jobs and secure employment opportunities.
- [f] Develop and pursue changes on a co-operative continuing basis by using participative practices.
- [g] Promote health, safety, welfare and equal opportunity for all employees.

14.—PRODUCTIVITY IMPROVEMENT

The Parties agree to adopt the Productivity Improvement Plan and Measurement Model attached at Schedule B.

The 1996/97 Productivity Improvement Plan and Measurement Model are an outcomes based approach using one key final indicator (total operating expenses) to measure output.

This reflects the outcomes of the SGIC’s productivity initiatives which emphasise strong customer focus and continuous improvement.

Total operating expense is the aggregate of claims, underwriting and operating expenses. (Refer to Measurement Model and Schedule B).

Benefits include but are not limited to—

SGIC—Profitable performance and the maintenance of a fully funded financial position will provide self sufficiency for the future, and allow greater investment in injury prevention and research programmes.

GOVERNMENT—No further capital contribution from Government, positive public perception of the SGIC and its contribution to Western Australia and the payment of Tax Equivalents to Treasury.

COMMUNITY—Economic benefits arising out of the lowest premiums in Australia. Social benefits from injury prevention/research programmes. Reduced hardship to accident victims through prompt payment of claims.

SGIC EMPLOYEES—Tangible link between their contribution to the goals of the SGIC and further salary increases.

15.—EMPLOYEE GRIEVANCE RESOLUTION

When an employee has a grievance, the matter shall be acted on in accordance with the SGIC Grievance Resolution Policy/Procedure. (Schedule D).

16.—DISPUTE SETTLEMENT PROCEDURES

Subject to the provisions of the Public Sector Management Act 1994, the following procedures are to be followed in connection with questions, disputes or difficulties arising under this Agreement.

- (i) The Union Representative and/or Employee/s concerned shall discuss the matters with the Immediate Supervisor in the first instance. An Employee may be accompanied by the Union Representative.
- (ii) If the matter is not resolved within 5 working days following the discussion in accordance with paragraph (i) hereof the matter shall be referred by the Union Representative or Employee to the Employer or his/her nominee for resolution.
- (iii) If the matter is not resolved within 5 working days of the Union Representatives or Employees notification of the dispute to the Employer it may be referred by the Employer or the Union to the WAIRC.

17.—CONSULTATION

[a] As part of the decision making process the Employer will consult with the Union on significant matters which impact on employees working lives. Such decisions may include, but are not limited to, changes in production programme, organisation, structure or technology that are likely to have significant effects on the Union's membership.

[b] Significant effects includes but are not limited to redundancy, significant changes in the composition, operation or size of the employer's workforce or in the skills required; the need for elimination or diminution of job opportunities, promotion opportunities, the need for retraining or transfer of employees to other work or locations, and restructuring of jobs.

[c] The Employer recognizes the rights of Unions to organise and represent their Members and supports the Unions role in contributing to a harmonious industrial relations environment within the SGIC.

[d] The Employer recognises appointed/elected Workplace Delegates and Deputy Delegates and will provide co-operation, support and reasonable time off during working hours so that they are able to carry out their role and functions effectively.

[e] Workplace Delegates or Deputy Delegates shall have access to all facilities required to perform their role including, but not be limited to, the reasonable use of photocopiers, fax machines, secure storage, meeting rooms, telephones and word processing facilities.

[f] The General Secretary or a duly authorised representative of the Union will on notification to the employer have the right to enter, subject to the SGIC'S security requirements, the SGIC'S premises during working hours, including meal breaks, for the purposes of discussing with Members of the Union and other interested employees covered by this Agreement, the legitimate business of the Union, or for the purpose of investigating complaints concerning the application of this Agreement, but shall in no way interfere with the work of employees.

[g] The parties agree to establish a Union Official on the Joint Consultative Committee (JCC).

18.—SALARY

[a] The Parties agree that employee salaries will increase from 1 September 1997 by an amount ranging from 0-5% provided that the productivity performance targets identified in the SGIC Productivity Improvement Plan set out in Schedule B have been achieved.

[b] Changes to the Total Operating Expenses have a direct impact on overall organisational profitability.

[c] Greater commitment by employees to the Special Productivity Initiatives which reduces the Total Operating Expenses will be recognised on a pro-rata basis to a maximum of 5% salary increase. This equates to a 1% salary increase for every additional \$10 million dollar decrease to the Total Operating Expenses.

[d] No salary increase is payable if, when using the budget assumptions, the actual Total Operating Expenses for the year is greater than \$320.5 million.

[e] If the Productivity Improvement Plan targets are exceeded or only partially met then the increase calculated by the Employer in consultation with the Union, using the Productivity Measurement Model will be paid to the employee. The Board will approve any increase which will be payable from 1 September 1997.

[f] The salary scales to be paid from 1 September 1997 are set out in Schedule A based on the budgeted target of 3%.

[g] Annual increments of the Employee's salary will be paid to the Employee in accordance with the salary scales set out in Schedule A.

19.—CEREMONIAL/CULTURAL LEAVE

[a] An employee who is legitimately required to be absent from work for their tribal/ceremonial/cultural purposes shall be entitled to take accrued annual leave entitlements, short leave entitlements or up to 5 days leave without pay.

[b] Ceremonial/cultural leave may be taken as single day absences or part of a single day.

[c] Such ceremonial/cultural leave shall include leave to meet the employee's customs, traditional law and to participate in ceremonial/cultural activities.

20.—FAMILY LEAVE

[a] For the purposes of this clause family member means the Employee's spouse, de facto spouse, child, step child, parent, step parent, grandparent, sibling or another person who lives in the Employee's household..

[b] An Employee with responsibilities in relation to members of their household or immediate family shall be entitled up to five (5) days family leave per annum without loss of pay to provide care and support for such persons when they are ill or otherwise to attend to urgent family responsibilities.

[c] Family leave entitlements shall be deducted from accrued annual leave, accrued sick leave or short leave entitlements.

[d] Family leave may be taken as single day absences or part of a single day.

[e] The Employee shall, wherever practical give the Employer notice of the intention to take family leave and the estimated length of absence. If it is not practicable to give prior notice of absence the employee shall notify the employer as soon as possible on the day of absence.

[f] The Employee shall provide, where required by the Employer, evidence to establish the requirement to take family leave.

21.—PARENTAL LEAVE

[a] Definitions

"Engagement Employee" is an Employee specifically engaged to replace an employee proceeding on parental leave.

[b] Eligibility for Parental Leave

- (i) An Employee is entitled to a period of up to fifty two (52) consecutive weeks parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.
- (ii) Where the Employee applying for the leave is the partner of a pregnant spouse one weeks leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.
- (iii) An Employee seeking to adopt a child under the age of five (5) years shall be entitled to three (3) weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of fifty two (52) weeks. Where both partners are employed by the SGIC, the three week period may be taken concurrently.
- (iv) An Employee seeking to adopt a child shall be entitled to two days unpaid leave for the Employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.
- (v) Subject to paragraph (ii) of this sub-clause, where both parties are employed by the Employer the leave shall not be taken concurrently except under special circumstances and with the approval of the Employer.

[c] Other Leave Entitlements

- (i) An Employee proceeding on parental leave may elect to utilize any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.
- (ii) An Employee may extend the maximum period of parental leave with a period of leave without pay subject to the Employer's approval.
- (iii) An Employee on parental leave is not entitled to paid sick leave and other paid award absences.
- (iv) Where the birth or adoption of a child results in other than the arrival of a child, the Employee shall be entitled to such period of sick leave certified as necessary by a registered Medical Practitioner.

- (v) Where a pregnant Employee not on parental leave suffers illness related to the Employee's pregnancy or is required to undergo a pregnancy related medical procedure the Employee may take any paid sick leave to which the Employee is entitled or such further unpaid leave for a period certified as necessary by a registered Medical Practitioner.
- [d] Notice of Variation
- (i) The Employee shall give not less than four week's notice in writing to the Employer of the date the Employee proposes to commence parental leave stating the period of leave to be taken.
- (ii) An Employee proceeding on parental leave may elect to take a shorter period of parental leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.
- (iii) An employee seeking to adopt a child shall not be in breach of sub-clause [d] (i) by failing to give the required period of notice if such failure is due to the requirement of the adopting agency to accept earlier or later placement of a child, or other compelling circumstances.
- [e] Transfer to Safe Job
- (i) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the Employee make it inadvisable for the Employee to continue in her present duties, the duties shall be modified or the Employee may be transferred to a safe position of the same classification until the commencement of parental leave.
- (ii) If the transfer to a safe position is not practicable, the Employee may take leave for such period as is certified necessary by a registered Medical Practitioner.
- [f] Replacement Employee
- Prior to engaging a replacement employee the Employer shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the Employee on parental leave.
- [g] Return to Work
- (i) An Employee shall confirm the intention of return to work by notice in writing to the Employer not less than four weeks prior to the expiration of the period of parental leave.
- (ii) An Employee on return to work from parental leave shall be entitled to the position which the Employee occupied immediately prior to proceeding on parental leave. Where an Employee was transferred to a safe job pursuant to sub-clause [e] hereof the Employee is entitled to return to the position occupied immediately prior to the transfer.
- (iii) An Employee may return on a part time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level in accordance with Clause 32—Part Time Work of this Agreement.
- (iv) Where the position occupied by the employee no longer exists the employee shall be entitled to a position of the same classification with duties similar to that of the abolished position.
- (v) An employee who has returned on a part time basis may revert to full time work at the same classification level within two years of the recommencement of work.
- [h] Effect of Leave on the Employment Contract
- (i) Fixed Term Contract
- An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.
- (ii) Continuous Service
- Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for

any purpose under the relevant award or this Agreement.

(iii) Termination of Employment

[aa] An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant award or Agreement.

[bb] An Employer shall not terminate the employment of an Employee on the grounds of the employee's application for parental leave or absence on leave but otherwise the rights of the Employer in respect of termination of employment are not affected.

22.—ANNUAL LEAVE

[a] Definitions

- (i) Accrued Annual Leave is the leave an employee is entitled to from a previous calendar year.
- (ii) Pro Rata Annual Leave is the proportion of leave that an employee is entitled to in the current year, either from the date of commencement, or to the date of cessation.

[b] Entitlement

- (i) Each employee is entitled to four weeks paid leave for each year of service. Annual leave shall be calculated on a calendar year basis commencing on January 1 in each year.
- (ii) An employee employed on a fixed term contract for a period greater than twelve (12) months, be credited with the same entitlement as a permanent employee. An employee employed on fixed term contract for a period less than twelve (12) months, shall be credited with the same entitlement on a pro-rata basis for the period of the contract.
- (iii) On written application, an employee shall be paid salary in advance when proceeding on annual leave.
- (iv) The provisions of this clause do not apply to Casual employees.

[c] Pro Rata Annual Leave

(i) Entitlement

[aa] An employee who is appointed to the Public Sector after January 1 is entitled to pro rata annual leave for that year, calculated in accordance with the following formula—

Completed Calendar Months of Service	Pro rata Annual Leave (Working Days)
1	2
2	3
3	5
4	7
5	8
6	10
7	12
8	13
9	15
10	17
11	18

[bb] Provided that in the first and last months of an employee's service the employee is entitled to pro rata annual leave of one working day for each two completed weeks of service.

[cc] For the purposes of this sub-clause, an employee who commences on the first WORKING day of a month and works for the remainder of the month and an employee who has worked throughout a month and terminates on the last working day of a month shall be regarded as having completed that calendar month of service.

- (ii) An Employee may take annual leave during the calendar year in which it accrues or anytime thereafter, but the time during which the leave may be taken is subject to the approval of the Employer.

- (iii) An Employee who has been permitted to proceed on Annual Leave and who ceases duty before completing the required continuous service to accrue the leave, must refund the value of the unearned pro rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an Employee.

[d] Part Time Entitlement

A Part Time Employee shall be granted Annual Leave in accordance with this clause, however payment to a Part Time Employee proceeding on Annual Leave shall be calculated having regard for any variations to the Employee's ordinary working hours during the accrual period.

[e] An Employee who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the Employee's ordinary working hours at the time of commencement of Annual Leave, may elect to take a lesser period of Annual Leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of Annual Leave.

[f] Portability

- (i) Where an Employee was, immediately prior to being employed by the SGIC, employed in the Public Service or any Western Australian State body of statutory authority the Employer shall approve portability of accrued and Pro Rata Annual Leave entitlements held at the date the Employee ceased that previous employment, provided that—

[aa] the Employee's employment with the SGIC commenced no later than one week after ceasing the previous employment; and

[bb] the Employee was not paid out all or part of the accrued and Pro Rata Annual Leave entitlements held at the time of ceasing that previous employment.

[g] The Employer may direct an Employee to take accrued Annual Leave and may determine the date on which such leave shall commence. Should the Employee not comply with the direction, disciplinary action may be taken against the Employee.

[h] Leave Loading

- (i) Subject to the provisions of sub-clause [h](ii) and [h](vi) of this clause, a loading equivalent to 17.5% of normal salary is payable to Employee's proceeding on Annual Leave, including accrued Annual Leave.

(ii) Maximum Loading

[aa] Subject to the provisions of paragraphs (iv) of this sub-clause the loading is paid on a maximum of four weeks Annual Leave.

[bb] Maximum payment shall not exceed the Average Weekly Total Earnings of all Males in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

- (iii) Annual Leave commencing in any year extending without a break into the following year attracts the loading calculated on the salary applicable on the day the leave commences.
- (iv) The loading payable on approved accrued Annual Leave shall be at the rate applicable at the date the leave is commenced. Under these circumstances an Employee can receive up to the maximum loading for the approved accrued Annual Leave in addition to the loading for the current year's entitlement.
- (v) A Pro Rata loading is payable on periods of approved Annual Leave less than four weeks.
- (vi) The loading is calculated on the rate of the normal fortnightly salary including any allowances which are paid as a regular fortnightly or annual amount. Any allowance paid to an Employee for undertaking additional or higher level duties is only included if the allowance is payable during that period of

normal Annual Leave as provided in sub-clauses [f] and [g] of Clause 35—Higher Duties Allowance of this Agreement.

- (vii) Where payment in lieu of Accrued or Pro Rata Annual Leave is made on the death or retirement of an Employee, a loading calculated in accordance with the terms of this clause is to be paid on Accrued and Pro Rata Annual Leave.

- (viii) When an Employee resigns, or ceases employment, or where an Employee is dismissed, an Annual Leave loading shall be paid as follows—

[aa] Accrued entitlements to annual leave—

A loading calculated in accordance with the terms of this clause for accrued annual leave is to be paid.

[bb] Pro rata annual leave—

No leave loading is to be paid.

- (ix) Part Time Employee's shall be paid a proportion of the Annual Leave loading at the salary rate applicable, provided that the maximum loading payable shall be calculated in accordance with the following—

$$\frac{\text{Hours of work per fortnight}}{76} \times \frac{\text{Maximum loading in accordance with [h](ii) of this clause}}{1}$$

- (x) An Employee who has been permitted to proceed on Annual Leave and who ceases duty other than by resignation or dismissal as a result of disciplinary action before completing the required continuous service to accrue the leave must refund the value of the unearned Pro Rata portion of Leave Loading but no refund is required in the event of the death of an Employee.

- (xi) An Employee who has been permitted to proceed on Annual Leave and who resigns or is dismissed as a result of disciplinary action must refund the value of the loading paid for leave other than accrued leave.

23.—LONG SERVICE LEAVE

[a] Each Employee who has completed—

- (i) A period of seven (7) years of continuous service in a permanent capacity; or
- (ii) A period of ten (10) years of continuous service in a temporary capacity;

but not including any service by an Employee under the age of 18 years prior to 8/1/93, shall be entitled to 13 weeks of Long Service Leave on full pay.

[b] Where an Employee has continuous service in both a temporary and permanent capacity the date on which the employee shall become entitled to Long Service Leave shall be determined by taking into account on a proportional basis the periods of temporary and permanent service.

[c] Each Employee is entitled to an additional 13 weeks of Long Service Leave on full pay for each subsequent period of 7 years of continuous service completed by him or her.

[d] A Part Time Employee shall have the same entitlement to Long Service Leave as Full Time Employee's however payment made during such periods of Long Service Leave shall be adjusted according to the hours worked by the Employee during that accrual period.

[e] For the purpose of determining an Employee's Long Service Leave entitlement, the expression "continuous service" includes any period during which the Employee is absent on full pay or part pay from duties in the Public Sector, but does not include—

- (i) any period exceeding two weeks during which the Employee is absent on leave without pay or maternity leave, except where Leave Without Pay is approved for the purpose of fulfilling an obligation by the Government to provide staff for a particular assignment external to the Public Sector of Western Australia;
- (ii) any period during which an Employee is taking Long Service Leave entitlement or any portion thereof except in the case of sub-clause [k] when the period excised will equate to a full entitlement of 13 weeks;

- (iii) any service by an Employee who resigns, is dismissed or whose services are otherwise terminated other than service prior to such resignation, dismissal or termination when that prior service has actually entitled the Employee to the Long Service Leave under the clause;
- (iv) any period of service that was taken into account in ascertaining the amount of a lump sumpayment in lieu of Long Service Leave;
- (v) any service of the Employee prior to attaining the age of 18 years;
- (vi) any service of a cadet whilst undertaking full time studies;

[f] A Long Service Leave entitlement which fell due prior to March 16, 1988 amounted to three months. A Long Service Leave entitlement which falls due on or after that date shall amount to thirteen weeks.

[g] Any Public Holiday or Public Service Holiday occurring during an Employee's absence on Long Service Leave and extra days in lieu thereof shall not be granted.

[h] The Employer may direct an Employee to take accrued Long Service Leave and may determine the date on which such leave shall commence. Should the Employee not comply with the direction, disciplinary action may be taken against the Employee.

[i] An Employee who has elected to retire at or over the age of 55 years and who will complete not less than 12 months continuous service before the date of retirement may take application to the Employer to take Pro Rata Long Service Leave before the date of retirement, based on continuous service of a lesser period than that prescribed by this clause for a Long Service entitlement.

[j] Compaction of leave

- (i) An Employee who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the Employee's ordinary working hours at the time of commencement of Long Service Leave, may elect to take a lesser period of Long Service Leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of Long Service Leave.
- (ii) Notwithstanding sub-clause [f] of this clause an Employee who has elected to compact an accrued entitlement to Long Service Leave in accordance with paragraph [j] (i) of this clause, shall only take such leave in any period on full pay, and the period exercised as "continuous service" shall be 13 weeks.

[k] Portability

- (i) Where an Employee was, immediately prior to being employed by the SGIC employed in the service of—

Any Public Service Agency;
The Commonwealth of Australia;
Any other State Government of Australia;
Any Western Australian State body of statutory authority;

and the period between the date when the Employee ceased previous employment and the date of commencing employment in the SGIC does not exceed one week, that Employee shall be entitled to Long Service Leave determined in the following manner—

[aa] the pro rata portion of Long Service Leave to which the Employee would have been entitled up to date of appointment with the SGIC, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of Pro Rata Long Service Leave, any Long Service Leave taken or any benefit granted in lieu of any such Long Service Leave during that employment shall be deducted from any Long Service Leave to which the Employee may become entitled under this clause; and

[bb] the balance of the Long Service Leave entitlement of the Employee shall be calculated upon appointment to the SGIC in accordance with the provisions of this clause;

- (ii) Nothing in this clause confers or shall be deemed to confer on any previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of Long Service Leave that accrued in the Employee's favour prior to the date on which the Employee commenced employment in the SGIC.

24.—PUBLIC HOLIDAYS

[a] The following days shall be allowed as holidays with pay—

- (i) New Year's Day, Australia Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, Queen's Birthday, Foundation Day, Labour Day provided that the Employer may approve another day to be taken as a holiday in lieu of any of the above mentioned days;
- (ii) Such Public Service Holidays as are prescribed by Regulations;

[b] When any of the days mentioned in sub-clause [a] of this clause falls on a Saturday or on a Sunday, the holiday shall be observed on the next succeeding Monday.

When Boxing Day falls on a Sunday or a Monday, the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

[c] (i) Each employee will be entitled to two days paid leave in lieu of two repealed Public Holidays.

(ii) One day of leave shall accrue on the first working day after the New Years Public Holiday and one day shall accrue on the day after the Easter Monday Public Holiday.

(iii) Part time employees shall accrue the leave if these are the employee worked or would have normally worked.

(iv) The taking of this leave must occur during the same calendar year as it falls due and the timing of this shall be by agreement between the employer and the employee.

25.—LEAVE WITHOUT PAY

[a] Subject to the provisions of sub-clause [b] of this clause, the Employer may grant an Employee Leave Without Pay for any period and is responsible for that Employee on his or her return;

[b] Every application for Leave Without Pay will be considered on its merits and may be granted provided that the following conditions are met—

- (i) The work of the SGIC is not inconvenienced; and
- (ii) All other leave credits of the Employee are exhausted;

[c] An employee on a fixed term appointment may not be granted Leave Without Pay for any period beyond that Employee's approved period of appointment;

[d] Leave Without Pay for Full Time Study

The Employer may grant an Employee Leave Without Pay to undertake full time study, subject to a yearly review of satisfactory performance.

- (i) The course of study is directly related to the Employees' official duties; or
- (ii) The course is not available on a part time basis; or
- (iii) There is an identified shortage of individuals with skills in the area addressed by the particular course of study; or
- (iv) It is critical to the continued operation of the SGIC for the Employee to undertake the particular course of study;

Leave Without Pay for this purpose shall not count as qualifying service for leave purposes.

[e] Leave Without Pay for Australian Institute of Sport Scholarships

Subject to the provisions of sub-clause [b] of this clause, the Employer may grant an Employee who has been awarded a sporting scholarship by the Australian Institute of Sport, Leave Without Pay.

Leave Without Pay for this purpose shall count as qualifying service for all purposes except Annual leave.

26.—SHORT LEAVE

[a] (i) The Employer may, upon sufficient cause being shown, grant an Employee Short Leave on full pay not exceeding 15.2 consecutive working hours, but any leave granted under the provisions of this clause shall not exceed, in the aggregate, 22.8 hours in any one calendar year.

(ii) Part Time Employees are eligible for Short Leave in accordance with this clause, on a pro rata basis calculated with the following formula—

$$\frac{\text{Hours worked per fortnight}}{76} \times \frac{22.8 \text{ hours}}{1}$$

(iii) An Employee employed on a fixed term contract of more than twelve months shall be eligible for Short Leave in accordance with this clause, and an Employee employed on a fixed term contract of less than twelve months shall be eligible for Pro Rata Short Leave in accordance with this clause.

27.—STUDY LEAVE

[a] Conditions for Granting Time Off

(i) An Employee may be granted time off with pay for Part Time Study purposes at the discretion of the Employer.

(ii) Part Time Employees are entitled to Study Leave on the same basis as Full Time Employees.

(iii) Time off with pay may be granted up to a maximum of five hours per week including travelling time, where subjects of approved courses are available during normal working hours, or where approved study by correspondence is undertaken, in remote locations lacking the required educational facilities.

(iv) Employees shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

(v) In every case the approval of time off to attend lectures and tutorials will be subject to—

[aa] SGIC convenience;

[bb] The course being undertaken on a part time basis

[cc] Employees undertaking an acceptable formal study load in their own time;

[dd] Employees making satisfactory progress with their studies; and

[ee] The course being relevant to the Employee's career in the SGIC, Public sector and being of value to the State;

(vi) A service agreement or bond will not be required.

[b] Payment of Fees

(i) Departments are to meet the payment of higher education administrative charges for cadets and trainees who, as a condition of their employment, are required to undertake studies at a University or College of Advanced Education. Employees who of their own volition attend such institutions to gain higher qualifications will be responsible for the payment of fees.

(ii) This assistance does not include the cost of text books or Guild and Society fees.

(iii) An Employee who is required to repeat a full academic year of the course will be responsible for payment of the higher education fees for that particular year.

[c] Approved Courses

(i) [aa] First degree courses at the University of Western Australia, Murdoch University, Curtin University of Technology, Edith Cowan University and University of Notre Dame Australia.

[bb] First degree of Associate Diploma courses at a College of Advanced Education;

[cc] Diploma courses at Technical and Further Education (TAFE);

[dd] Two year full time Certificate courses at TAFE;

[ee] Courses recognised by the National Authority for the Accreditation of Translators and Interpreters (NAATI) in a language relevant to the needs of the Public Sector;

(ii) Except as outlined in paragraph [c](iv) of this clause, Employees are not eligible for study assistance if they already possess one of the qualifications specified in subparagraphs [c](i)[aa] and [c](i)[bb] of this clause.

(iii) An Employee who has completed a Diploma through TAFE is eligible for study assistance to undertake a degree course at any of the tertiary institutions listed in subparagraph [c](i)[aa] or [c](ii)[aa] of this clause. An Employee who has completed a two year full time Certificate through TAFE is eligible for study assistance to undertake a Diploma course specified in sub-clause [c](i)[aa] or [c](i)[bb] or a degree or Associate Diploma course specified in subparagraph (3)(a)(i) or (3)(a)(ii) of this clause.

(iv) Assistance towards additional qualifications including second or higher degrees may be granted in special cases such as a graduate embarking on a post-graduate Diploma in Administration or a higher degree in a specialist area of benefit to the service as well as the Employer.

[d] (i) An acceptable part-time study load should be regarded as not less than five hours per week of formal tuition with at least half of the total formal study commitment being undertaken in the Employee's own time, except in special cases such as where the Employee is in the final year of study and requires less time to complete the course, or the employee is undertaken the recommended part-time year or stage and this does not entail five hours formal study.

(ii) A first degree or Associate Diploma course does not include the continuation of a degree or Associate Diploma towards a higher post graduate qualification.

(iii) In cases where Employees are studying subjects which require fortnightly classes weekly study load should be calculated by averaging over two weeks the total fortnightly commitment.

(iv) The time spent attending or travelling to or from formal classes for approved courses between 7.00a.m. and 7.00p.m., less the usual lunch break, and for which "time off" would usually be granted, is to be counted as credit time for the purpose of calculating total hours worked per week.

(v) Travelling time returning home after lectures or tutorials is to be calculated as the excess time taken to travel home from such classes, compared with the time usually taken to travel home from the Employee's normal place of work.

(vi) An Employee shall not be granted more than 5 hours time off with pay per week except in exceptional circumstances where the Employer may decide otherwise.

(vii) Time off with pay for those who have failed a unit or units may be considered for one repeat year only.

[e] Subject to the provisions of sub-clause [f] of this clause the Employer may grant an Employee full time study leave with pay to undertake—

(i) Post graduate degree studies at Australian or overseas tertiary education institutions; or

(ii) Study tours involving observations and/or investigations; or

(iii) A combination of post graduate studies and study tour;

[f] Applications for full time study leave with pay are to be considered on their merits and may be granted provided that the following conditions are met—

(i) The course or a similar course is not available locally. Where the course of study is available locally, applications are to be considered in accordance with the provisions of sub-clause [a] to [e] of this Clause and Clause 25—Leave Without Pay;

(ii) It must be a highly specialised course with direct relevance to the Employee's profession.

(iii) It must be highly relevant to the SGIC's corporate strategies and goals;

(iv) The expertise or specialisation offered by the course of study should not already be available through other Employees employed within the SGIC;

- (v) If the application was previously granted study leave, studies must have been successfully completed at that time. Where an Employee is still under a bond, this does not preclude approval being granted to take further study leave if all the necessary criteria are met;
- (vi) A fixed term Employee may not be granted study leave with pay for any period beyond that Employee's approved period of engagement;

[g] Full time study leave with pay may be approved for more than 12 months subject to a yearly review of satisfactory performance.

[h] Where an outside award is granted and the studies to be undertaken are considered highly desirable by the SGIC, financial assistance to the extent of the difference between the Employee's normal salary and the value of the award may be considered. Where no outside award is granted and where a request meets all the necessary criteria then part or full payment of salary may be approved at the discretion of the Employer.

[i] The Board of Commissioners supports recipients of coveted awards and fellowship, return airfares, payment of fees, allowance for books, accommodation or a contribution towards accommodation.

[j] Where recipients are in receipt of a living allowance, this amount should be deducted from the Employee's salary for that period.

[k] Where study leave with pay is approved and the SGIC also supports the payment of transit costs and/or an accommodation allowance, approval for the transit and accommodation costs is required as follows—

Interstate—Ministerial approval

Overseas—Premier's approval

[l] Where Employees travelling overseas at their own expense wish to participate in a study tour or convention whilst on tour, study leave with pay may be approved by the Employer together with some local transit and accommodation expenses providing it meets the requirements of sub-clause (f) of this clause. Each case is to be considered on its merits.

[m] The period of full time study leave with pay is accepted as qualifying service for leave entitlements and other privileges and conditions of service prescribed for Employees under this Agreement.

28.—MILITARY LEAVE

[a] Subject to SGIC convenience, leave of absence may be granted by the Employer to an Employee who is a volunteer member of the Defence Force Reserves or the Cadet Force for the purpose of attending a training camp, school, class or course of instruction subject to the conditions set out hereunder—

- (i) Application for leave of absence for the above reasons, shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the Employee shall furnish a certificate of attendance to the Employer;
- (ii) An Employee who is a member of the Defence Force Reserves and the Cadet Force may only be granted leave for attendance at one camp of continuous training and one additional special school, class or course of instruction in the 12 month period;
- (iii) On written application, an Employee shall be paid salary in advance when proceeding on such leave;

[b] Attendance at a camp for Annual Continuous Obligatory Training

- (i) An Employee may be granted leave for a period not exceeding 76 hours on full pay in any period of twelve months commencing on July 1, in any year;
- (ii) If the Officer-in-Charge of a military unit certifies that it is essential for an Employee to be at the camp in an advance or rear party, a maximum of 30.4 extra hours on full pay may be granted in the twelve month period;

[c] Attendance at One Special School, Class or Course of Instruction

- (i) In addition to the leave granted under sub-clause [b] of this clause a period not to exceed sixteen calendar days in any period of twelve months commencing on July 1, in each year may be granted by the Employer, provided the Employer is satisfied that

the leave required is for a special purpose, and not for a further routine camp.

- (ii) In this circumstance, an Employee may elect to utilise annual leave credits. However, if the leave is not taken from the annual leave, salary during the period shall be at the rate of the difference between the normal remuneration of the Employee and the defence force payments to which the Employee is entitled if such payments do not exceed normal salary. In calculating the pay differential, pay for Saturdays, Sundays, Public Holidays and Public Service Holidays and special rostered days off is to be excluded, and no account is to be taken of the value of any board or lodging provided for the Employee.
- (iii) Leave without pay shall be granted if the defence force payments exceed the normal pay of the Employee.

[e] The provision of this clause do not apply to Casual Employees.

[f] Part Time Employees shall receive the same entitlement as Full Time Employees, but payment shall only be made for those hours that would normally have been worked but for the leave.

29.—WITNESS AND JURY SERVICE LEAVE

1. WITNESS

[a] An Employee subpoenaed or called as a witness to give evidence in any proceeding shall as soon as practicable notify the Manager/Supervisor who shall notify the Employer.

[b] Where an Employee is subpoenaed or called as a witness to give evidence in an official capacity that Employee shall be granted by the Employer leave of absence with pay, but only for such period as is required to enable the Employee to carry out duties related to being a witness. If the Employee is on any form of paid leave, the leave involved in being a witness will be reinstated, subject to the satisfaction of the Employer. The Employee is not entitled to retain any witness fee but shall pay all fees received into Consolidated Revenue Fund. The receipt for such payment with a voucher showing the amount of fees received shall be forwarded to the Employer.

[c] An Employee subpoenaed or called as a witness to give evidence in an official capacity shall, in the event of non-payment of the proper witness fees or travelling expenses as soon as practicable after the default, notify the Employer.

[d] An Employee subpoenaed or called as a witness on behalf of the Crown, not in an official capacity shall be granted leave with full pay entitlements. If the Employee is on any form of paid leave, this leave shall not be reinstated as such witness service is deemed to be part of the Employee's civic duty. The Employee is not entitled to retain any witness fees but shall pay all fees received into Consolidated Revenue Fund.

[e] An Employee subpoenaed or called as a witness under any other circumstances other than specified in sub-clause 1[b] and 1[d] of this clause shall be granted leave of absence without pay except when the Employee makes an application to clear accrued leave in accordance with award provisions.

2. JURY

[a] An Employee required to serve on a jury shall as soon as practicable after being summoned to serve, notify the Manager/Supervisor who shall notify the Employer.

[b] An Employee required to serve on a jury shall be granted by the Employer leave of absence on full pay, but only for such period as is required to enable the Employee to carry out duties as a juror.

[c] An Employee granted leave of absence on full pay as prescribed in sub-clause 2[a] of this clause is not entitled to retain any juror's fees but shall pay all fees received into Consolidated Revenue Fund. The receipt for such payment shall be forwarded with a voucher showing the amount of juror's fees received to the Employer.

30.—LEAVE FOR INTERNATIONAL SPORTING EVENTS

[a] Special leave with pay may be granted by the Employer to an Employee chosen to represent Australia as a competitor or official, at a sporting event which meets the following criteria—

- (i) it is a recognised international amateur sport of national significance; or

- (ii) it is a world or international regional competition; and
- (iii) no contribution is made by the sporting organization towards the normal salary of the Employee;

[b] The Employer shall make enquiries with the Ministry of Sport and Recreation—

- (i) whether the application meets the above criteria;
- (ii) the period of leave to be granted;

31.—SICK LEAVE

[a] Entitlement

- (i) The Employer shall credit each permanent Employee with the following sick leave credits, which shall be cumulative—

	Sick Leave on full pay	Sick Leave on half pay
On the day of initial appointment	38 hours	15.2 hours
On the completion of 6 months continuous service	38 hours	22.8 hours
On the completion of 12 months continuous service	76 hours	38 hours
On the completion of each further period of 12 months continuous service	76 hours	38 hours

- (ii) An Employee employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent officer. An Employee employed on a fixed term contract for a period less than 12 months, shall be credited with the same entitlement on a pro rata basis for the period of the contract;
- (iii) A Part Time Employee shall be entitled to the same sick leave credits, on a pro rata basis according to the number of hours worked each fortnight. Payment for sick leave shall only be made for those hours worked each fortnight. Payment for sick leave shall only be made for those hours that would normally have been worked had the Employee not been on sick leave;
- (iv) The provisions of this clause do not apply to casual Employees;

[b] Medical Certificate

- (i) An application for sick leave exceeding two consecutive working days shall be supported by the certificate of a registered Medical Practitioner or, when the nature of the illness consists of a dental condition and the period of absence does not exceed five consecutive working days, by the certificate of a registered Dentist;
- (ii) The amount of sick leave granted without the production of the certificate required in paragraph (i) of this sub-clause shall not exceed, in the aggregate, 5 working days in any one credit year.

[c] Where the Employer has occasion for doubt as to the cause of the illness or the reason for the absence, the Employer may arrange for a registered Medical Practitioner to visit and examine the Employee, or may direct the Employee to attend the Medical Practitioner for examination. If the report of the Medical Practitioner does not confirm that the Employee is ill, or if the Employee is not available for examination at that time of the visit of the Medical Practitioner, or fails, without reasonable cause, to attend the Medical Practitioner when directed to do so, the fee payable for the examination, appointment or visit shall be paid by the Employee.

[d] If the Employer has reason to believe that an Employee is in such a state of health as to render a danger to fellow employees or the public, the Employee may be required to obtain and furnish a report as to his/her condition from a registered Medical Practitioner or be examined by the Executive Director, Public Health and Scientific Support Services, Health Department of Western Australia or a registered Medical Practitioner nominated by the Executive Director. The fee for any such examination shall be paid by the SGIC.

[e] Where an Employee is ill during the period of annual leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that as a result of the illness the Employee was confined to his/her place of residence or a hospital for a period of at least seven (7) consecutive calendar days, the Employer may grant sick leave

for the period during which the Employee was so confined and reinstate annual leave equivalent to the period of confinement.

[f] Where an Employee is ill during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that as a result of illness the Employee was confined to his/her place of residence or a hospital for a period of at least fourteen (14) consecutive calendar days, the Employer may grant sick leave for the period during which the Employee was so confined and reinstate long service leave equivalent to the period of confinement.

[g] An Employee who is absent on leave without pay is not eligible for sick leave during the currency of that leave without pay.

[h] No sick leave shall be granted with pay, if the illness has been caused by the misconduct of the Employee or in any case of absence from duty without sufficient cause.

[i] Where an Employee who has been retired from the Public Sector/Public Service on medical grounds resumes duty therein, sick leave credits at the date of retirement shall be reinstated. This provision does not apply to an Employee who has resigned from the Public Sector/Public Service and is subsequently reappointed.

[j] Workers Compensation

Where an Employee suffers a disability within the meaning of Section 5 of the Worker's Compensation and Rehabilitation Assistance Act, 1981 which necessitates that Employee being absent from duty, sick leave with pay shall be granted to the extent of sick leave credits. In accordance with Section 80(2) of the Worker's Compensation and Rehabilitation Assistance Act, 1981 where the claim for worker's compensation is decided in favour of the Employee, sick leave credit is to be reinstated and the period of absence shall be granted as sick leave without pay.

[k] War Caused Illnesses

- (i) An Employee who produces a certificate from the Department of Veterans' Affairs stating that the Employee suffers from war caused illnesses, may be granted special leave credits of 112 hours 30 minutes (15 standard hour days) per annum on full pay in respect of that war caused illness. These credits shall accumulate up to a maximum credit of 337 hours and 30 minutes (45 standard hour days), and shall be recorded separately to the Employee's sick leave credit.
- (ii) Every application for sick leave for war caused illnesses shall be supported by a certificate from a registered Medical Practitioner as to the nature of the illness.

[l] Portability

- (i) The Employer shall credit an Employee additional sick leave credits up to those held at the date that Employee ceased previous employment provided—

[aa] immediately prior to commencing employment in the SGIC, the Employee was employed in the service of—

The Commonwealth Government of Australia; or

Any other State of Australia; or

In a State body or statutory authority; and

[bb] the Employee's employment with the Public Service of Western Australia commenced no later than one week after ceasing previous employment.

- (ii) The maximum break in employment permitted by subparagraph (i)(bb) of this sub-clause, may be varied by the approval of the Employer provided that where employment with the SGIC commenced more than one week after ceasing the previous employment, the period in excess of one week does not exceed the amount of accrued and pro rata annual leave paid out at the date the Employee ceased with the previous Employer.

32.—PART TIME WORK

[a] The parties agree to establish a process to identify ways in which to improve access to part time work arrangements within

the SGIC and develop strategies to facilitate more flexible work arrangements.

[b] Definitions

- (i) Permanent part-time employment is defined as regular and continuing employment for a minimum of 15.2 hours per week, and a maximum of 30.4 hours per week.
- (ii) A part-time position shall be one which has discrete functions and responsibilities, but arranged in such a way as to be consistent with job redesign and multi skilling.

[c] Part-Time Agreement

- (i) Each permanent part-time arrangement shall be confirmed in writing and shall include the agreed period of the arrangement, and the agreed hours of duty in accordance with sub clause [e] of this clause.
- (ii) The conversion of a full-time employee to part-time employment can only be implemented with the written consent or by written request of the employee. No employee may be converted to part-time employment without the employee's prior agreement.

[d] Hours of Duty

- (i) Except as agreed between the employer and the union, the parameters for the working of "ordinary hours" shall be 7.00am to 7.00pm.
- (ii) The employer shall specify in writing before a part-time employee commences duty, the prescribed weekly and daily hours of duty for the officer including starting and finishing times each day ("ordinary hours").
- (iii) The employer shall give an officer one (1) month's notice of any proposed variation to the employee's starting and finishing times and/or particular days worked, provided that the employer shall not vary the officer's total weekly hours of duty without the employee's prior written consent, a copy of which shall be sent to the Union.
- (iv) There may be exceptional reasons for temporary variations to an employee's working hours. Since the usual reasons for seeking part-time employment are because of other commitments, any variations must be agreed to in writing by the part-time employee.

If agreement is reached to vary an employee's ordinary working hours pursuant to this sub clause—

- [aa] Time worked to seven hours and thirty six minutes on any day is not to be regarded as overtime but an extension of the contract hours for that day and should be paid at the normal rate of pay.
- [bb] Overtime shall not be payable unless the total time worked on any day exceeds 8 hours.
- [cc] Additional days worked, up to a total of five days per week, are also regarded as an extension of the contract and should be paid at the normal rate.

[e] Salary and Annual Increments

- (i) An employee who is employed on a part-time basis shall be paid a proportion of the appropriate full-time salary dependent upon time worked. The salary shall be calculated in the following manner—

$$\frac{\text{Hours worked per fortnight}}{76} \times \frac{\text{Full-time fortnightly salary}}{1}$$

- (ii) A part-time employee shall be entitled to annual increments, subject to meeting the usual performance criteria.

[f] Leave

- (i) A part-time employee shall be entitled to the same leave and conditions prescribed in this Agreement for full time officers.
- (ii) Payment to an employee proceeding on accrued annual leave or long service leave shall be calculated on a pro rata basis having regard for any variations to the officer's ordinary working hours during the accrual period.

- (iii) Sick leave and any other paid leave shall be paid at the current salary, but only for those hours or days that would normally have been worked had the employee not been on such leave.

[g] Holidays

A part-time employee shall be allowed the prescribed Public Holidays and Public Service Holidays without deduction of pay in respect of each holiday which is observed on a day ordinarily worked by the part-time employee.

[h] Right of Reversion of Employee

- (i) Where a full-time employee is permitted, at the employee's initiative, to work part-time for a period no greater than 12 months in the position the employee occupied on a full-time basis before becoming part-time, that employee has a right (upon written application) to revert to full-time hours in that position or a position of equal classification as soon as is deemed practicable by the employer, but no later than the expiry of the agreed period.
- (ii) A full-time employee who is permitted at the employee's initiative to work part-time for a period greater than 12 months in the position the employee occupied on a full-time basis before becoming part-time, may apply to revert to full-time hours in that position but only as soon as is deemed practicable by the employer.

This should not prevent the transfer of the employee to another full-time position at a salary commensurate with that of the employee's previous full-time position.

- (iii) A part-time employee who was previously a full-time employee within the organisation, who occupies a part-time position which was the initiative of management and who desires to revert to full-time employment will be required to seek a promotion or transfer to a full-time position by—

- [aa] application for advertised vacancies; and/or
- [bb] by notification in writing to the employer of the employee's desire to revert to full-time employment.

- [iv] Nothing in paragraph (iii) of this sub clause shall prevent the employer, with the written consent of the employee, transferring that employee to a full-time position at a level not less than the employee's substantive level.

Prior to effecting the transfer of an employee under paragraph (iii) of this sub clause the employer shall—

- [aa] notify the employee of the specific position to which the employer proposes to transfer the employee; and
- [bb] obtain the written consent of the employee to transfer to that position.

- [i] The number or proportion of part-time employee's employed in departments shall not exceed any number or proportion that may be agreed in writing between the Union and the Employer.

33.—CHILD CARE ARRANGEMENTS

[a] During the term of this Agreement the parties agree that through the Joint Consultative Committee (JCC) a joint working party will be established to conduct an analysis on the issue of child care, to ascertain the requirements of employees and make recommendations to the JCC as to the best way the Employer can assist employees' access to high quality child care.

34.—HOURS OF DUTY

[a] Subject to sub-clauses [c] and [d] of this clause, the ordinary working hours, exclusive of meal intervals shall not exceed thirty eight in any week nor seven hours and thirty six minutes in any day. Such hours shall be worked on Monday to Friday between the hours of 7.00am and 7.00pm, as agreed by the Employer, in a spread of not more than ten hours.

[b] Each meal interval shall be taken between the hours of 11.30am and 2.30pm for full time staff and shall not be less than one-half hour in duration. An employee shall not be required to work more than five hours on any day without taking a break for a meal interval.

[c] (i) By agreement between the employer and the employee, the ordinary hours of work may be arranged to allow the employee to work flexitime and/or to accumulate time off without loss of pay.

(ii) Credit hours may be accumulated up to a maximum of 38 hours every three settlement periods. A settlement period shall consist of four weeks. Any hours accrued in excess of 38 hours at the end of three settlement periods shall be paid at the rate of time and a half.

[d] Ordinary hours may be worked by way of shifts outside the hours specified in sub-clause [a] hereof where, pursuant to an agreement between the employer and the Association, it is permitted.

35.—HIGHER DUTIES ALLOWANCE

[a] Subject to sub-clause [b] of this clause an employee who is directed by the employer to act in an office which is classified higher than the employee's own substantive office and who performs the full duties and accepts the full responsibility of the higher office for a continuous period of five consecutive working days or more, shall, subject to the provisions of this clause, be paid an allowance equal to the difference between the employee's own salary and the salary the employee would receive if the employee was permanently appointed to the office in which the employee is so directed to act.

[b] (i) An employee who is directed to act in a higher classified office but is not required to carry out the full duties of the position and/or accept the full responsibilities, shall be paid such proportion of the allowance provided for in sub-clause [a] as the duties and responsibilities performed bear to the full duties and responsibilities of the higher office. Provided that the employee shall be informed, prior to the commencement of acting in the higher classified office, of the duties to be carried out, the responsibilities to be accepted and the allowance to be paid.

(ii) The allowance paid may be adjusted during the period of higher duties.

[c] Where the full duties of a higher office are temporarily performed by two (2) or more officers they shall each be paid an allowance as determined by the employer.

[d] Where an employee is directed to act in an office which has an incremental range of salaries such officer shall be entitled to receive an increase in higher duties allowance equivalent to the annual increment the officer would have received had the employee been permanently appointed to such office, provided that acting service with allowances for acting in offices for the same classification or higher than the office during the eighteen months preceding the commencement of so acting shall aggregate as qualifying service towards such an increase in the allowance.

[e] Where an officer who has qualified for payment of higher duties allowance under this clause is required to act in another office or other offices classified higher than the employee's own for periods less than five working days without any break in acting service, such employee's shall be paid higher duties allowance for such periods, provided that payment shall be made at the highest rate the employee has been paid during the term of continuous acting or at the rate applicable to the office in which the employee is currently acting—whichever is the lesser.

[f] Where an employee who is in receipt of an allowance granted under this clause and has been so for a continuous period of 12 months or more, proceeds on—

(i) a period of normal leave; or

(ii) a period of any other approved leave of absence of not more than four weeks, such employees shall continue to receive the allowance for the period of leave, provided that this sub-clause shall also apply to an employee who has been in receipt of an allowance for less than 12 months if during the employee's absence no other employee acts in the office in which the employee was acting immediately prior to proceeding on leave and the employee resumes in the office immediately on return from leave.

[g] Where an employee who is in receipt of an allowance granted under this clause proceeds on—

(i) a period of annual leave in excess of the normal; or

(ii) a period of any other approved leave of absence of more than four weeks, such employee's shall not be entitled to receive payment of such allowance for the whole or any part of the period of such leave;

[h] For the purpose of this clause "normal annual leave" shall mean the annual period of recreation leave as prescribed in Clause 22—Annual Leave of this Agreement.

36.—OVERTIME

[a] In this clause the following expressions shall have the following meaning—

"prescribed hours of duty" means the employee's normal working hours as prescribed in Clause 34—Hours of duty or written instruction issued out of that clause.

"public holiday" means the days prescribed in Clause 24—Public Holidays of this Agreement.

"ordinary travelling time" means the time which an employee would ordinarily spend in travelling by public transport once daily from the employee's home to the employee's usual headquarters and home again. It is the time elapsing between the time of departure from home and the official time of commencement of duty and the official time of cessation of duty and arrival at home. Where an employee has a continuing approval to use a vehicle for official business, ordinary travelling time means the time spent in travelling by that vehicle from home to headquarters and home again each day.

"a day" shall mean from midnight to midnight.

[b] When and as often as it is necessary to overcome arrears of work or to meet pressure of business, any employee may be required by the employer to perform overtime duty at times other than the ordinary hours of attendance applicable to that employee.

[c] (i) All work performed by an employee whose hours of attendance are determined in accordance with sub-clause [a] of Clause 34—Hours of Duty of this Agreement by direction of the Employer—

[aa] before or after the prescribed hours of duty on a weekend; and

[bb] on a Saturday, Sunday or public holiday, shall be classed as overtime and, subject to the provisions of this clause, shall be paid for at the hourly rate prescribed by paragraph (ii) of this sub-clause.

(ii) payment for overtime shall be calculated on an hourly basis in accordance with the following formula—

Weekdays—

For the first three hours on any week day—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{3}{2}$$

After the first three hours on any one week day—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{2}{1}$$

Saturdays—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{3}{2}$$

After the first three hours or after 12.00 noon, whichever is the earlier, on any Saturday—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{2}{1}$$

Sundays—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{2}{1}$$

Public Holidays—

During prescribed hours of duty

$$\frac{\text{Fortnightly salary}}{76} \times \frac{3}{2}$$

in addition to the normal days pay.

During hours outside of prescribed hours of duty—

$$\frac{\text{Fortnightly salary}}{76} \times \frac{5}{2}$$

[aa] For the purposes of this clause, fortnightly salary shall not include any district allowances, personal

allowances, service allowances. Special allowances or higher duties allowance, unless otherwise approved by the employer.

Provided that a special allowance or higher duties shall be included in “fortnightly salary” when overtime is worked on duties for which these allowances are specifically paid.

(iii) Subject to prior agreement in writing, time off in lieu of payment may be granted by the employer. Such time off in lieu to be determined on an hourly basis by dividing the normal hourly rate of pay into the amount to which the employee would otherwise have been entitled at the prescribed rate in accordance with paragraph (ii) of this sub-clause.

The employee shall be required to clear accumulated time off in lieu within two months of the overtime being performed. If the employer is unable to release the employee to clear such leave, then the employee shall be paid for the overtime worked.

Provided that by agreement between the employer and the employee, time off in lieu of overtime may be able to be accumulated beyond two months from the time the overtime is performed so as to be taken in conjunction with periods of leave.

(iv) Any commuted allowance and/or time off in lieu of overtime, other than that provided in paragraph [iii] of this sub-clause shall be only negotiated between the employer and the Union.

(v) No claim for payment or time off in lieu under the provisions of this clause shall be allowed in respect of any day on which the additional time worked amounts to less than 30 minutes.

(vi) Where an employee having received prior notice, is required to return to duty—

[aa] On a Saturday, Sunday or public holiday otherwise than during prescribed hours of duty the employee shall be entitled to payment at the rate in accordance with paragraph (ii) of this sub-clause for a minimum period of three hours.

[bb] Before or after the prescribed hours of duty on a weekend the employee shall be entitled to payment at the rate in accordance with paragraph (ii) of this sub-clause for a minimum period of one hour 30 minutes;

[cc] For the purposes of this paragraph, where an officer is required to return to duty more than once, each duty period shall stand alone in respect to the application of minimum period payment except where the second or subsequent return to duty is within any such minimum period.

(vii) The provisions of paragraph (vii) of this sub-clause shall not apply in cases where it is customary for an employee to return to the employee’s place of employment to perform a specific job outside the officer’s prescribed hours of duty or where the overtime is continuous (subject to a meal break) with the completion or commencement of prescribed hours of duty.

(viii) When an Employee is directed to work overtime at a place other than the usual headquarters, and provided that place where the overtime is to be worked is situated in the area within a radius of 50 kilometres from the usual headquarters, and the time spent in travelling to and from that place is in excess of the time which an employee should ordinarily spend in travelling to and from the usual headquarters, and provided such travel is undertaken on the same day as the overtime is worked, then such excess shall be deemed to form part of the overtime worked.

(ix) Except as provided in paragraph (ii) of sub-clause [e] and paragraph (ii) of sub-clause [a] of this clause when an employee is directed to work overtime at a place other than the usual headquarters and provided that the place where the overtime is to be worked is situated outside the area within the radius of 50 kilometres from the usual headquarters and the time spent in travelling to and from that place is in excess of the time which an employee would ordinarily spend in travelling to and from the usual headquarters, then the employee shall be granted time off in lieu of such excess time spent in actual travel in accordance with sub-clause [f].

(x) Except as provided in paragraph (xii) of this sub-clause, payment for overtime, or the granting of time off in lieu of

overtime or travelling time, shall not be approved in the following cases—

[aa] Employees whose maximum salary or maximum salary and allowance in the nature of salary exceeds the gross annual equivalent to the salary paid from time to time in respect of Level 5 as contained in Clause 18.—Salary of this Agreement;

[bb] Employees whose work is not subject to close supervision;

(xi) Notwithstanding the provision of paragraph (ix) of this sub-clause, where from the nature of the duties required of from other relevant circumstances it appears just and reasonable, any such employee as is referred to in that paragraph shall, with the special approval of the Employer be paid overtime or granted time off in lieu as prescribed by paragraph (ii) or paragraph (iii) respectively of this sub-clause and where in any such case the employer declines to give such special approval the matter may be referred to the Public Service Arbitrator. When an employee not subject to close supervision is directed by the employer to carry out specific duties involving the working of overtime, and provided such overtime can be reasonably determined, then the employee shall be entitled to payment or time off in lieu or overtime worked in accordance with paragraph (ii) or paragraph (iii) of this sub-clause.

(xii) [aa] Where an employee performs overtime duty after the time at which the employee’s normal hours of duty end on one day and before the time at which the employee’s normal hours of duty are to commence on the next succeeding day which results in the employee not being off duty between these times for a continuous period of not less than ten hours, the employee is entitled to be absent from the duty without loss of salary from the time of ceasing overtime duty, until the employee has been off duty for a period of ten hours;

[bb] Provided that where an employee is required to return to or continue work without the break provided in subparagraph [aa] of this paragraph then the employee shall be paid at double the ordinary rate until released from duty or until the employee has had ten consecutive hours off duty without loss of salary for ordinary working time occurring during such absences;

[cc] the provisions of this paragraph shall not apply to employee’s included in sub-clause [d] of this clause.

(xiii) Where an employee is required to work a continuous period of overtime which extends past midnight into the succeeding day the time worked after midnight for the purpose of calculation of payment provided for in paragraph (ii) of this sub-clause.

[d] (i) For the purpose of this sub-clause—

“Standby” shall mean a written instruction to an employee to remain at the employee’s normal hours of duty, and to perform certain designated tasks periodically or on an ad hoc basis. Such employee’s shall be provided with appropriate facilities for sleeping if attendance is overnight, and other personal needs, where practicable.

Other than in extraordinary circumstances, officers shall not be required to perform more than two periods of standby in any rostered week.

This provision shall not replace normal overtime or shift work requirements.

“On Call” shall mean a written instruction to an employee rostered to remain at the employee’s residence or to otherwise be immediately contactable by telephone or paging system outside the employee’s normal hours of duty in case of a call out requiring an immediate return to duty.

“Availability” shall mean a written instruction to an employee to remain contactable, but not necessarily in immediate proximity to a telephone or paging system, outside the employee’s normal hours of duty and be available and in a fit state at all times for recall for duty.

“Availability” will not include situations in which employee’s carry paging devices or make their telephone numbers available only in the event that they may be needed for casual contact or recall to work. Subject to paragraph (ix) of sub-clause [c] of this clause recall to work under such circumstances would constitute emergency duty in accordance with sub-clause [e] of this clause.

(ii) Except as otherwise agreed between the employer and the union, an employee who is required by the employer to be on "out of hours contact" during periods off duty shall be paid an allowance in accordance with the following formulae for each hour or part thereof the officer is on "out of hours contact"—

Standby

Level 2 (minimum) weekly rate x $\frac{1}{38}$ x $\frac{38}{100}$

On Call

Level 2 (minimum) weekly rate x $\frac{1}{38}$ x $\frac{19}{100}$

Availability

Level 2 (minimum) weekly rate x $\frac{1}{38}$ x $\frac{19}{100}$ x $\frac{50}{100}$

Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is made in accordance with the provisions of sub-clause [c] of this clause when the employee is recalled to work.

(iii) Where an employee is required to be on "on call" or "availability" and the means of contact is to be by telephone the employer shall—

[aa] Where the telephone is not already installed, pay the cost of such installation;

[bb] Where an employee pays or contributes towards the payment of the rental of such telephone, pay the employee 1/52nd of the annual rental paid by the employee for each seven days or part thereof on which an employee is rostered to be on "on call" or "availability";

(iv) An employee shall be reimbursed the cost of all telephone calls made on behalf of the employer as a result of contact pursuant to paragraph (i) of this clause.

(v) Where the employee rostered for on "on call" or "availability" is recalled for duty during the period for which the employee is "out of hours contact" then the employee shall receive payment for hours worked in accordance with paragraph (ii) of sub-clause [c] of this clause.

(vi) Time spent in travelling to and from the place of duty where an employee rostered on "on call" or "availability" is actually recalled to duty, shall be included with actual duty performed for purposes of overtime payment.

(vii) Minimum payment provisions do not apply to an employee rostered for "out of hours contact" duty.

(viii) An employee in receipt of an "out of hours contact" allowance and who is recalled to duty shall not be regarded as having performed emergency duty in accordance with sub-clause [e] of this clause.

(ix) Employees subject to this clause shall, where practicable, be periodically absented from any requirement to hold themselves on "standby", "on call" or "availability".

[e] (i) (a) Where an employee is called on duty to meet an emergency at a time when the employee would not ordinarily have been on duty and no notice of such call was given prior to completion of usual duty on the last day of work prior to the day on which the employee is called on duty, then, if called to duty—

[aa] on a Saturday, Sunday or public holiday otherwise than during the prescribed hours of duty the employee shall be entitled to payment at the rate in accordance with paragraph (ii) of sub-clause [c] of this clause for a minimum period of three hours;

[bb] before or after the prescribed hours of duty on a weekend the employee shall be entitled to payment at the rate in accordance with paragraph (ii) of sub-clause [c] of this clause for a minimum period of two hours 30 minutes;

(b) for the purpose of this sub-clause, where an employee is recalled more than once, each period of emergency duty shall stand alone in respect to the application of the minimum

period of payment, subject to paragraph (iii) of this sub-clause.

(ii) Time spent in travelling to and from the place of duty where the employee is actually recalled to perform emergency duty shall be included with actual duty performed for purposes of overtime payment.

(iii) An employee recalled to work to perform emergency duty shall not be obliged to work for the minimum period if the work is completed in less time, provided that an employee called out more than once within any such minimum period shall be entitled to any further payment for the time worked within that minimum period.

[f] An employee eligible for payment of overtime in accordance with paragraph (x) of sub-clause [c] of this clause, who is required to travel on official business outside of the employee's normal working hours and away from the employee's usual headquarters, shall be granted time off in lieu of such actual time spent in travelling at equivalent or ordinary rates on weekdays and at time and one half rates on Saturday, Sundays and public holidays, provided—

(i) Such travel is undertaken at the direction of the employer.

(ii) Such travel shall not include—

(aa) time spent in travelling by an employee on duty at a temporary headquarters to the employee's home for weekends for the employee's own convenience;

(bb) time spent in travelling by plane between the hours of 11.00pm and 6.00am;

(cc) time spent in travelling by train or coach between the hours of 11.00pm and 6.00am;

(dd) time spent in travelling by ship when meals and accommodation are provided;

(ee) time spent in travelling resulting from the permanent transfer or promotion of an employee to a new location;

(ff) time in travelling in which an employee is required by the employer to drive, outside ordinary hours of duty, an employer's vehicle or to drive the employee's own motor vehicle involving the payment of motor vehicle allowance but such time shall be deemed to be overtime and paid in accordance with paragraph (ii) of sub-clause [c] of this clause.

(iii) Time off in lieu will not be granted for periods of less than thirty minutes.

(iv) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty, and where the exigencies of travel compel an employee to travel during the employee's usual lunch interval such additional travelling time is not to be taken into account in computing the number of hours of travelling time due.

(v) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty which is in excess of the employee's ordinary travelling time.

(vi) Except as provided in paragraph (ii) of this sub-clause, all time spent in actual travel on Saturday's, Sunday's and public holidays provided in Clause 24—Public Holidays of this Agreement, shall be deemed to be excess travelling time.

[g] (i) A break of 30 minutes, shall be made for meals between 11.30am and 2.30pm and between 5.00pm and 7.00pm when overtime duty is being performed.

Except in the case of emergency, an employee shall not be compelled to work more than five hours' duty without a meal break. At the conclusion of a meal break the calculation of the five hours limit recommences.

(ii) An employee required to work overtime who purchases a meal shall be reimbursed for each meal purchased at the rate prescribed for that meal in Schedule C to this Agreement.

Provided that the overtime worked when such a meal is purchased totals not less than two hours, such reimbursement shall be in addition to any payment for overtime to which the employee is entitled.

(iii) If an employee, having received prior notification of a requirement to work overtime, is no longer required, then the employee shall be entitled, in addition to any other penalty, to reimbursement for a meal previously purchased.

37.—AVAILABILITY OF AGREEMENT

Every employee shall be entitled to have access to a copy of this Agreement. This Agreement shall be kept in an easily accessible place in each department.

38.—TIME AND SALARIES RECORD

[a] The employer shall keep or cause to be kept a time and salaries record showing—

- (i) the name of each employee;
- (ii) the nature of the work performed;
- (iii) the hours worked each day;
- (iv) the salary, allowances and overtime paid to each employee.

Any system of automatic recording by means of machines shall be deemed to comply with the provision to the extent of the information recorded.

[b] (i) The time and salary record shall be produced on demand for inspection by the General Secretary or duly accredited official of the Union during the employer's usual office hours and when necessary the duly accredited official of the Union may take a copy of the record.

- (ii) The Union shall—
 - [aa] give prior notification to the employer on when it proposes to inspect the record;
 - [bb] not conduct interviews during normal working hours in circumstances which will result in the employer's business being unduly interrupted or otherwise hampered; and
 - [cc] treat with confidentiality any information obtained from time and salary records.

(iii) The employer's office shall be deemed to be a convenient place for the purposes of inspecting records and if for any reason the time and salary record is not available when the duly accredited official of the Union calls to inspect it, the record will be made available for inspection at a mutually convenient time at the employer's office.

(iv) Where the employer maintains a personal or other file on an employee, subject to the employer's convenience, the employee shall be entitled to examine all material maintained on that file.

39.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signed for and on behalf of the—

CIVIL SERVICE ASSOCIATION of WESTERN AUSTRALIA INCORPORATED—

.....Signed.....

DAVE ROBINSON

BRANCH SECRETARY

DATE: 22/7/97

STATE GOVERNMENT INSURANCE COMMISSION

.....Signed.....

VIC EVANS

MANAGING DIRECTOR

DATE: 23/7/97

SCHEDULE A
STATE GOVERNMENT
INSURANCE COMMISSION
SALARIES

SCHEDULE A — SALARIES

Salary Per Annum (\$)

Level	Current Rate	3% Payable From 1/9/97
LEVEL 1		
P016-92%	10929	11257
P016-96%	11405	11747
Under 17 years	11880	12236
P017-92%	12773	13156
P017-96%	13328	13728
17 years	13883	14299
P018-92%	14899	15346
P018-96%	15547	16013
18 years	16195	16681
P019-92%	17245	17762
18536P019-96%	17996	18536
19 years	18746	19308
P020-92%	19367	19948
P020-96%	20210	20816
20 years	21052	21684
P011-92%	21276	21914
P011-96%	22201	22867
21 years or 1st year of adult service	23126	23820
22 years or 2nd year of adult service	23838	24553
23 years or 3rd year of adult service	24549	25285
24 years or 4th year of adult service	25257	26015
25 years or 5th year of adult service	25967	26746
26 years or 6th year of adult service	26679	27479
27 years or 7th year of adult service	27497	28322
28 years or 8th year of adult service	28062	28904
29 years or 9th year of adult service	28900	29767
LEVEL 2		
1st year	29902	30799
2nd year	30670	31590
3rd year	31477	32421
4th year	32331	33301
5th year	33224	34221
LEVEL 3		
1st year	34450	35484
2nd year	35406	36468
3rd year	36392	37484
4th year	37403	38525
LEVEL 4		
1st year	38792	39956
2nd year	39879	41075
3rd year	40997	42227
LEVEL 5		
1st year	43152	44447
2nd year	44608	45946
3rd year	46121	47505
4th year	47692	49123
LEVEL 6		
1st year	50217	51724
2nd year	51934	53492
3rd year	53710	55321
4th year	55608	57276
LEVEL 7		
1st year	58515	60270
2nd year	60528	62344
3rd year	62718	64600
LEVEL 8		
1st year	66276	68264
2nd year	68826	70891
3rd year	71986	74146
LEVEL 9		
1st year	75935	78213
2nd year	78601	80959
3rd year	81643	84092

Level	Salary Per Annum (\$)	
	Current Rate	3% Payable From 1/9/97
CLASS		
Class 1	86243	88830
Class 2	90843	93568
Class 3	95441	98304
Class 4	100040	103041

SCHEDULE B
STATE GOVERNMENT
INSURANCE COMMISSION
1996/97
PRODUCTIVITY IMPROVEMENT
PLAN
CONTENTS

- 1 Mission Statement
- 2 Corporate Objectives
- 3 1996/97 Productivity Measurement Model
- 4 Measurement of Performance
 - 4.1 Business Plan Objectives
 - 4.2 Special Productivity Initiatives
 - 4.2.1 Customer Focus—Service Excellence
 - 4.2.2 Employee Performance Management & Development System
 - 4.2.3 Individual Productivity Initiatives by Employees
 - 4.2.4 Employee Training & Development
 - 4.2.5 Employee Safety & Health

- 5 Key Assumptions
- 6 Application of Productivity Improvements
- 7 Salary Increase

Attachments

- 1 *Productivity Measurement Model*
- 2 *Key Assumptions*
- 3 *Organisation Structure*
- 4 *Customer Service Vision & Values*

S G I C

PRODUCTIVITY IMPROVEMENT PLAN 1996/97

1 MISSION STATEMENT

To achieve best practice in—

- providing Motor Vehicle Personal Injury and Industrial Disease Compensation insurance, and
- managing the Western Australian Public Sector's self-insurance arrangements,

through the promotion of risk management and the commitment and professionalism of our people.

2 CORPORATE OBJECTIVES

The following goals are set to achieve the aims outlined in the Mission Statement—

- Ensure the continuation of the existing business of the State Government Insurance Commission.
- Remain the sole provider of both Motor Vehicle Personal Injury and Mining Industry Industrial Diseases Compensation insurance.
- Retain the management of the Government's self-insurance arrangements.
- Establish a positive corporate image.
- Have a committed, service-orientated workforce operating in a satisfying, healthy and discrimination-free environment.

3 1996/97 PRODUCTIVITY MEASUREMENT MODEL

The 1996/97 Productivity Measurement Model is an outcomes based approach. It uses one key financial indicator (Total Operating Expenses) to measure output. This ultimately reflects the outcomes of the SGIC's productivity initiatives, which emphasise strong customer focus and continuous improvement.

Total Operating Expenses is the aggregate of Claims, Underwriting and Administration Expenses. (Refer to Model, ATTACHMENT 1).

Rather than attempting to place a precise economic value on a range of qualitative employee productivity initiatives, which affect different employees in different ways, the model makes the assumption that the outcome of productivity improvement will be reflected in the organisation's operating expenses and ultimately, profitability. This approach involves the aggregation of the efforts of all employees.

The sum of Premium and Other Income less Total Operating Expenses equals the SGIC's Underwriting Contribution, which when combined with Investment Income realises the SGIC's Operating Profit.

The SGIC is budgeting for an Operating Profit of \$30.6 million for 1996/97.

It should also be noted that Investment Income is an integral part of the profitability chain for all insurance organisations as almost all operate on the basis of an underwriting loss which is subsequently recouped via Investment Income.

SGIC recognises that its employees primarily influence the organisation's expenditure factors. The reasons being that investments are managed by external Fund Managers and premium income is generated in the context of a compulsory scheme.

Accordingly investment, premium and other income are excluded from the employee performance area of the Productivity Measurement Model.

Productivity initiatives by employees are therefore focussed on claims, underwriting and administration expenses.

In addition, independent actuaries contracted by the SGIC can adopt varying methods of calculation which make year on year baseline comparisons of performance inappropriate for the SGIC in the context of this productivity measurement.

It is proposed that through the business planning process and adjustment to the employee productivity initiatives plus other variables within the model, the SGIC will be able to apply the same Productivity Measurement Model to future agreements.

4 MEASUREMENT OF PERFORMANCE

SGIC's business planning and budgeting process operates on the financial year cycle and uses an annual goal and target approach reflecting the changing insurance environment in which it operates.

SGIC is organised into discrete business and operational service units to achieve its corporate objectives. The Corporate Planning process requires each unit, with appropriate input from staff, to develop a comprehensive business or operational plan and budget (containing annual performance targets) for the forthcoming financial year.

The Board of Commissioners which is comprised of senior private sector business people drawn from relevant business areas, including insurance, law and finance review and approve the business plans and budgets. Budgets are reviewed monthly by the Board and the outcomes and targets of this process for 1996/97 form the basis of the 1996/97 Productivity Measurement Model.

4.1 Business Plan Objectives

The 1996/97 Business Planning and Budget process identified over 50 specific key initiatives designed to achieve SGIC's objectives.

These initiatives are detailed within the SGIC's Strategic Business Plans which were endorsed by the Board of Commissioners and the Hon. Minister for Finance.

Achievement of these initiatives, which are planned to deliver substantial benefits to the SGIC and its stakeholders, have been factored into the 1996/97 Budget to arrive at the forecast profit of \$30.6 million. In particular, these initiatives have been considered in determining that Total Operating Expenses for 1996/97 will not exceed the forecast loss of \$320.5 million.

Each quarter the Board of Commissioners is provided with a progressive report on implementation of these key initiatives within each Division.

The most significant Business Plan initiatives are to—

MOTOR VEHICLE PERSONAL INJURY DIVISION

- Maintain the Third Party Insurance Fund's fully funded position.

- Achieve a prudential margin on outstanding Claims Reserves of 10% by 30 June 1997 whilst retaining a surplus of assets over liabilities.
- Provide a claims management service which treats claimants with respect and provides equitable compensation.
- Contribute to the reduction of motor vehicle crashes, in conjunction with the Traffic Board / Road Safety Council, through the funding of appropriate road safety and accident prevention initiatives.
- Promote an awareness and understanding of the Motor Vehicle Third Party (Personal Injury) Insurance Scheme throughout the community, so that obligations are met and entitlements understood.
- Promote the registration and insurance of all WA motor vehicles using public roads.
- Research and develop a method of case estimating for all outstanding active claims.
- Examine the merits of establishing a team of experienced officers to facilitate a consistent approach in the management of major injury claims.

GOVERNMENT INSURANCE DIVISION (RISKCOVER)

- Develop risk management services for clients, promote its benefits and co-ordinate the implementation of risk management practices by State Public Sector Agencies.
- Provide professional insurance advice and quality self-insurance products and service to clients.
- Provide a claims management service which treats claimants and cover holders with respect and provides equitable compensation.
- Establish and manage a customer accepted self-insurance scheme with 100% participation by Public Sector Agencies.
- Contingent upon Cabinet approval, implement the restructure of the Government Insurance Fund.

INDUSTRIAL DISEASE DIVISION

- Provide a claims management service for clients which treats claimants with respect and provides equitable compensation.
- Ensure entities that conduct mining operations convert cover notes to policies within 60 days.
- In an appropriate lung cancer claim, in conjunction with other defendants, pursue contribution proceedings against tobacco companies.
- Be the State Government's principal advisor on Industrial Diseases insurance matters.

4.2 Special Productivity Initiatives

In framing the 1996/97 Budget targets, the Executive Management Group and the Board of Commissioners have also factored in special initiatives requiring strong employee commitment for success. They are—

- Customer Focus/Service Excellence
- Employee Performance Appraisal
- Individual Productivity Initiatives by Employees
- Employee Training and Development
- Employee Safety and Health

4.2.1 Customer Focus—Service Excellence

Objective

Achieve an enhanced public and customer image of the SGIC through the adoption of a service culture by SGIC employees.

Rationale & Strategy

The SGIC has embarked upon a long term service improvement programme entitled "Service Excellence".

The organisation is committed to genuine improvement in all areas of customer service as a means of enhancing the quality of service delivered to all customers, the public image of the SGIC and providing a more productive and satisfying workplace for its people.

Achievements to date have been significant and will provide the foundation for further achievement during 1996/97 and beyond.

- Promulgate the SGIC's Customer Service Vision and Values to every employee, customer and client.
- Undertake independent market research to measure public and customer satisfaction with SGIC by 30 August 1997.
- Increase the emphasis on Customer Service in each employee's Performance Management and Development Plan.
- Ongoing Business Unit assessment of customer service research data in consultation with employees to identify "gaps" in service and opportunities for improvement.
- Implementation of Recognition and Reward system for employee Excellence in Customer Service.

Measurement

- Independent Market Research will demonstrate qualitative and quantitative improvement in public and customer perception of the SGIC in terms of the service provided by employees.

4.2.2 Employee Performance Management & Development System

Objective

Commitment to the employee Performance Management & Development System as a structured means of organisational and employee performance planning, measurement and communication.

Rationale & Strategy

The SGIC business planning and budget cycle demands a formal system of planning, managing and appraising employee performance as the link between business objectives and employee effort.

The system provides the SGIC with a formal means of communicating business plan objectives to staff and will focus resources and effort on key areas of responsibility. Similarly employees will benefit from a structured performance plan, measures of performance, structured training needs analysis, regular feedback and career planning and development.

The system will be further enhanced to provide computerised reporting capabilities.

Measurement

The system will incorporate an objective numerical performance rating measurement.

- Improvement in the average employee performance rating from 2.8 to 3.0 by 30 June 1997.
- Full commitment to the process of formal employee performance management.
- Contribution towards the achievement of business plan and budget targets by 30 June 1997 formally acknowledged by Business Unit Managers as part of the Productivity Improvement Plan Review.

4.2.3 Individual Productivity Initiatives by Employees

Objective

The SGIC seeks to foster a working environment in which the creativity and innovation of its employees is encouraged and rewarded.

Rationale & Strategy

Employees have the opportunity to initiate productivity improvements to processes through a range of participative processes that allow employees to continuously improve the way their work is done.

Participation on employee working groups such as—

MVPI Division Methods and Productivity Review

Customer Service Council

RiskCover Project Team
Occupational Safety and Health Committee
Corporate Security Committee
User Groups

provide employees with the means of reviewing existing processes and recommending productivity improvements to the SGIC.

4.2.4 Employee Training & Development

Objective

Enhance the competence of SGIC employees to assist in the achievement of corporate business objectives and provide career development opportunities to individual employees.

Rationale & Strategy

The SGIC operates within the insurance industry in a competitive service environment. The SGIC is striving to achieve the financial and non financial targets contained in the corporate and business plans and recognises the significant contribution that competent employees make to the success of the organisation.

The SGIC will implement an Employee Training and Development Plan during 1996/1997 that will deliver structured functional and developmental training relevant to the business needs of the organisation.

The relevant training will be identified through the business planning process and incorporate modern training methodologies such as competency based training approaches and interactive computer simulations.

Computer systems training will also be increased to support the SGIC's information technology systems migration and strategies contributing to increased productivity through exploitation of information technologies.

Measurement

The effectiveness of this initiative will be measured by the following performance measures—

- The delivery of an average of 25 hours training per employee by 30 June 1997.
- Of the 25 hours average training per employee, 6.0 hours will be dedicated to end user computer training in the area of mainframe systems, personal computers and associated software.
- The implementation of all training and development initiatives contained in the 1996/1997 Training and Staff Development Plan.
- Execution of Training & Development Service Level Agreements by the Human Resources Division.

4.2.5 Employee Safety & Health

Objective

The organisation and its people are committed to continuous improvement in occupational safety and health standards through the implementation of an organisational framework of risk management within the workplace which involves all parties in protecting employees health and safety and creates a culture of employee wellness.

Rationale & Strategy

To meet these objectives, the SGIC and its people will adopt a broad agenda through the consultative processes established by this Agreement.

- commitment to the ThinkSafe—WorkSafe programme.
- continuous review of work and management practices affecting the inter-relationship between efficiency, productivity and health and safety at the workplace level;
- measures designed to increase efficiency which ensure safe and healthy operation and increased job satisfaction;

- training issues including hazard specific and health and safety systems training;
- management of occupational safety and health through a comprehensive risk management approach which *aims to control hazards at source*, reduce the incidence and costs of occupational injuries and illnesses, and to provide a rehabilitation system for injuries and illnesses which have occurred. The focus of the SGIC's OSH strategy is at the "front end" hazard identification and elimination stage rather than the management of costs arising from incidents; and
- promotion of employee wellness strategies that improve employee productivity and reduce absenteeism.

Measurement

- OSH performance will be measured and reported within each Division of the SGIC.
- Performance will be measured both quantitatively and qualitatively.

Specific performance measures as at 1 July 1997 will be—

- No increase in real terms in employers indemnity premium for 1996/1997.
- Decreasing proportion of lost time injuries as opposed to the number of hazard reports received (indicative of effective prevention strategy).
- 10% decrease in the median time lost arising out of lost time injuries (indicative of the severity of the injury and effectiveness of rehabilitation strategies).
- 5% reduction in total days lost through absenteeism.

5 KEY ASSUMPTIONS

The SGIC, Board and management team have made a number of key assumptions in compiling the budgets which directly affect the Productivity Measurement Model.

These key assumptions are detailed in Attachment number 2.

The budget targets and subsequent salary increases to employees are on the basis that these assumptions hold true. This goes some way to minimising the impact of external factors such as the volatility of actuarial calculations.

If the assumptions do not hold true, and have a material effect on the outcome, then for the purpose of calculating employee performance under the Productivity Measurement Model, original assumptions will be used.

6 APPLICATION OF PRODUCTIVITY IMPROVEMENTS

Achieving the objectives contained in this Plan and Productivity Measurement Model will demonstrate that the staff of SGIC have applied themselves diligently to key strategic areas.

Although the productivity initiatives and performance measures are detailed separately it is recognised that the rewards must be shared equally amongst all staff to ensure a constructive Corporate culture.

7 SALARY INCREASE

The SGIC's annual accounts will be audited by August/September 1997 and the percentage salary increase payable to staff will be determined by using the Productivity Measurement Model.

The Board will approve any increase which will be payable from 1 September 1997.

Attachment 2

The following are assumptions common to all Funds within SGIC for the *Outstanding Claims Liability* for the 1996/97 Budget. The only exception being the Workers' Compensation and Public Liability classes in the Government Insurance Fund. The Outstanding Claims Liability for all other insurance classes in the Government Insurance Fund is based on assumptions listed under that particular Fund.

1 Wage inflation rate of 5.0% p.a..

2 Superimposed inflation rate for claims cost of 1.5% pa..

3 Investment earning rate of 9.0% p.a.

4 A 10% prudential margin in the Third Party Insurance Fund provision will be achieved by 30 June 1997. A central estimate (i.e. no prudential margin added) for the remaining funds.

The following are additional assumptions for the various funds.

Third Party Insurance Fund

- 1 Gross Written Premium
3% growth in registered motor vehicles.
- 2 Gross Claims Paid
Actuarial forecast number of claims closed.
- 3 Claims expense as % of net payments 4.4%.
- 4 Claim number growth from 1995/96 onwards at 3.0% p.a.

Government Insurance Fund

- 1 Gross Written Premium, Gross Claims Paid for classes other than Workers' Compensation and Public Liability classes.
Wage inflation of 2.75%, inflation of 3.25% and building cost increases of 5%.
- 2 Outstanding Claims Liability for classes other than Workers' Compensation and Public Liability classes.
Inflation of 3.25% and building cost increases of 5%.
- 3 Claims expense as % of net payments
7%.
- 4 Claim number growth
 - For Workers' Compensation class
 - From 1995/96 to 1996/97 : -7.0% p.a.
 - From 1996/97 : -1.0% p.a.
 - For Public Liability class
 - From 1995/96 onwards : 2.0% p.a.

Compensation (Industrial Diseases) Fund

- 1 Claims expense as % of gross payments
7%.

Insurance Commission General Fund

- 1 Claims expense as % of gross payments
8%.

SCHEDULE C

STATE GOVERNMENT INSURANCE COMMISSION

OVERTIME

Meals Allowance

(Operative from 1st pay period on or after 31/7/96)

Breakfast	\$ 6.25	per meal
Lunch	\$ 7.70	per meal
Evening Meal	\$ 9.25	per meal
Supper	\$ 6.25	per meal

The rates prescribed in this schedule shall be subject to any amendments issued from time to time by the Department of Productivity and Labour Relations in Circulars to Departments and Authorities.

**ST. JOHN OF GOD HOSPITAL SUBIACO
(MAINTENANCE) AGREEMENT 1996.
No. AG 97 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

St John of God Hospital Subiaco Inc

and

Australian Manufacturing Workers Union

and

Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers, WA Branch

and

Construction, Mining, Energy, Timberyards, Sawmills, and
Woodworkers Union of Australia

and

Automotive, Food, Metals, Engineering, Printing And
Kindred Industries Union of Workers, Western Australian
Branch.

No. AG 97 of 1997.

3 September 1997.

Order:

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 97 OF 1997.

HAVING heard Mr I. Oakley on behalf of the first named party and Ms J. Harrison on behalf of the second, third and fourth named party; and

WHEREAS there was no appearance on behalf of the fifth named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

WHEREAS the agreement presented to the Commission has been executed by the fifth named party and the Commission is thereby satisfied that such indicates the wish of that party that the agreement be registered;

AND WHEREAS the Commission is satisfied that the aforementioned agreement complies with s.41A, s.49A and s.49B of the Industrial Relations Act, 1979;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement titled the St John of God Hospital Subiaco (Maintenance) Agreement 1996, filed in the Commission on 9 April 1997 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,

[L.S.]

Commissioner.

AGREEMENT

ST. JOHN OF GOD HOSPITAL SUBIACO
(MAINTENANCE) AGREEMENT 1996

ARRANGEMENT

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ST JOHN OF GOD HOSPITAL SUBIACO INC.

St John of God Hospital Subiaco Inc. is committed to the dignity and worth of each person. We believe that work is a major forum in which we express and develop our dignity and grow towards fullness in human living.

We believe that conditions of work must be such that each person has the freedom and resources needed for growth and development towards wholeness.

St John of God Hospital Subiaco Inc. is committed to the development and maintenance of an organisational culture that is person focused, committed to the Christian ministry of healing, and to the processes of Quality Caring.

St John of God Hospital Subiaco Inc. has an organisational culture that promotes, encourages and facilitates individual and organisational growth and development towards quality service provision. It allows for flexibility and mutuality in the arrangements of working conditions.

It is a culture that leads to greater job satisfaction and ever improving quality of patient care and services.

St John of God Hospital Subiaco Inc. will arrange conditions of employment, "Employment Relationships" in accordance with the following "Principles of Employment Relationships."

PRINCIPLES FOR EMPLOYMENT RELATIONSHIPS BASED ON FIDELITY TO OUR HERITAGE

August 1993

1. Positive employment relationships are essential for the successful provision of health care. Recognition of the rights and duties of the hospital and each employee are required for fairness and mutual accountability. [Justice]*

2. The work of all employees is valued equally in the Mission and operation of the System. (This includes the work of those who provide direct patient care and those whose work enables these hands-on employees to function effectively.) [Respect]*

3. Behaviours in the workplace must demonstrate respect for the basic orientation of the Mission, Philosophy and Cultural Values of the hospital. [Respect]*

4. In decisions related to clinical provision of health care, the expert knowledge and experienced judgements of health care professionals are acknowledged in their individual areas of competency as we work in collaboration with each other. [Respect, Justice, Excellence]*

5. The hospital recognises the different cultures and faith traditions of our employees. It respects and values these

differences and strives to learn from the richness of this diversity. [Hospitality, Respect]*

6. Opportunities for employment, career development and other pathways to growth are open to all people competent for the positions available throughout the hospital. [Hospitality, Compassion, Respect, Justice and Excellence]*

7. The hospital recognises the right of employees to form associations to engage in collective actions, to negotiate various benefits for their members and to work for a better society. This does not exclude the employee's right to choose individual negotiations when appropriate. [Respect, Justice]*

8. Decision making, planning and policy formation related to the work of employees will be participative processes involving relevant stake-holders. Due processes are established to attend to grievances, injuries and other concerns. [Hospitality, Compassion, Respect, Justice and Excellence]*

9. Each employee is expected to be committed to person centred care, to continual improvement of the quality of services and to the requirements of the hospital's Mission, Vision and Goals as described in their employment contracts. [Hospitality, Compassion, Respect, Justice and Excellence]*

10. Each employee will be involved in ongoing learning. [Justice, Excellence]*

11. Employees are entitled to fair compensation for their work and they will share in the benefits of their work. [Hospitality, Justice, Excellence]*

12. Each employee will contribute to quality patient care and to the common good of all by just and honest performance of the duties of their individual position. [Hospitality, Justice, Excellence]*

(* The Core Cultural Value(s) most relevant to each principle is noted in square brackets [].)

CAREGIVER EMPLOYMENT AGREEMENT

Involvement in this Agreement results in mutual commitment to the following—

St John of God Hospital Subiaco Inc.—

1. The provision of fair employment conditions.
2. Maintenance of safe working environments.
3. Opportunities for growth and development for each employee.
4. Resources to facilitate optimum work processes and quality of services.
5. Participation in continual improvement of all work processes.
6. Provision of information and training to enable each employee to understand and fulfil his or her obligations under this Agreement and to apply safe work practices.
7. Non requirement of employees to perform duties outside their competence.
8. Provision of a regular cycle of appraisal and review of performance and developmental needs.
9. Involvement of employees as participants in the general functioning of the workplace.

Each employee—

1. Provision of an honest day's work in accordance with the relevant Position Description.
2. Positive participation in the desired organisational culture of the hospital.
3. Involvement in learning that will facilitate personal and professional growth and development.
4. Observance of appropriate safety and security regulations.
5. Observance of the hospital's policies and procedures.
6. Participation in a regular cycle of appraisal and review of performance and developmental needs.

1.—PARTIES

The parties to this Agreement shall be St John of God Hospital Subiaco Inc. ("the hospital"), the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (WA Branch), the Western Australian Builders' Labourers, Painters' and Plasterers' Union of Workers and the

Construction, Mining, Energy, Timbryards, Sawmills and Woodworkers Union of Australia —Western Australian Branch.

2.—AREA AND SCOPE

(1) This Agreement shall apply to all employees eligible for membership of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (WA Branch), the Western Australian Builders' Labourers, Painters' and Plasterers' Union of Workers and the Construction, Forestry, Mining, Energy, Timbryards, Sawmills and Woodworkers Union of Australia—Western Australian Branch employed by the hospital in the classifications contained in Clause 21—Wages of this Agreement throughout the State of Western Australia.

(2) It is estimated that the number of employees who will be bound by this Agreement is 15.

3.—TERM

The term of this Agreement shall be from the beginning of the first pay period commencing on or after the date of registration to 2 June 1998.

4.—REPLACEMENT

(1) Notwithstanding the provisions of Clause 3—Term, of this Agreement, this Agreement shall continue to operate until it is replaced by a new Agreement.

(2) Provided that—

- (a) the parties may at any time agree to vary or cancel the Agreement in accordance with the provisions of the *Industrial Relations Act 1979*.
- (b) the parties shall review the Agreement should, as a result of movements in award rates of pay, the total wage prescribed by this agreement for any classification fall below the relevant award safety net. Any such review shall be conducted in accordance with the state Wage Fixing Principles in operation at that time.

5.—INTERPRETATION

In this Agreement;

- (1) "casual" means an employee engaged and paid as such;
- (2) "day worker" means an employee appointed as such. Other than by agreement between the hospital and employee concerned the ordinary hours of duty of a day worker may only be worked between 6 am and 6 pm Monday to Friday inclusive.
- (3) "shift worker" means an employee appointed as such. The ordinary hours of work of a shift worker may be worked on any day of the week Monday to Sunday inclusive.
- (4) "continuous shift employee" means an employee who is required to work ordinary hours of duty in accordance with a roster where the employee is rostered for duty over seven days of the week, and is required to work and works regularly on every day of the week, including public holidays and Sundays;
- (5) "fixed term contract" refers to a contract of employment in which an employee is engaged for a specific period of time or for the duration of a specific project. Nothing in this subclause shall restrict the right of the hospital or the employee to terminate the engagement within the specified term in accordance with the provisions of Clause 8.—Separation of this Agreement.
- (6) "ordinary rate" means the total rate of pay prescribed in Clause 21.—Wages of this Agreement (including tool and leading hand allowances) and any regular overaward payment.
- (7) "ordinary time earnings" means the ordinary rate (as defined), any regular over award payment and shift and weekend penalties where the shift worked is part of the employee's ordinary hours of work.
- (8) "part-time" refers to a permanent employee with a guaranteed minimum number of hours (inclusive of holidays and leave) who is regularly employed to

work less hours than those prescribed for full time employees;

- (9) "public holiday" means New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Queen's Birthday, Christmas Day and Boxing Day.
- (10) "relevant award" means the Metal Trades (General) Award 1966 or the Building Trades Award 1968, whichever is applicable.

6.—CLASSIFICATION STRUCTURE

An employee covered by this Agreement shall be classified in accordance with—

Clause 5.—Definitions and Classification Structure of Part 1 of the Metal Trades (General) Award 1966; or

Clause 6.—Definitions of the Building Trades Award 1968;

whichever is applicable.

7.—DUTIES

Each employee will be required to work in accordance with his/her duty statement and the hospital's policies and procedures. The hospital may direct each employee to carry out such duties as are within the limits of the employee's skill, competence or training.

8.—SEPARATION

(1) Hospital Giving Notice

- (a) The contract of service may be terminated by the hospital on any day by giving to the employee the required period of notice in writing and the contract shall expire at the end of that period of notice.
- (b) The required period of notice shall be—

Employee's period of continuous service with the hospital	Period of notice
Not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

The required period of notice is increased by one week if the employee is over 45 years old and has completed at least 2 years continuous service with the hospital.

(c) Provided that—

- (i) the contract of service of a probationary employee (other than a casual) may be terminated by the hospital giving the employee one week's notice in writing; and
- (ii) the contract of service of an employee engaged as a casual may be terminated by the hospital giving the employee one hour's notice. Such notice need not be in writing.

(d) Payment in lieu of the required period of notice may be made by the hospital if the required notice is not given.

The hospital may terminate the contract of service by providing part of the required notice and payment in lieu of the balance.

(2) Employee Giving Notice

- (a) The contract of service may be terminated on any day by the employee giving to the hospital two weeks notice in writing and the contract shall expire at the end of that period of notice.

Where there is written agreement between the hospital and the employee a longer period of notice up to and including four weeks may be required.

(b) Provided that—

- (i) the contract of service of a probationary employee (other than a casual) may be terminated by the employee giving one week's notice in writing; and
- (ii) the contract of service of an employee engaged as a casual may be terminated by the employee giving the hospital one hour's notice. Such notice need not be in writing.

- (c) If an employee fails to give the required notice or leaves during the notice period, the hospital may, at its discretion, deduct from any monies due to the employee, an amount equal to ordinary time earnings for the period of notice not given.

(3) The employee and the hospital may agree in writing upon a longer period of notice than prescribed in this clause.

(4) The required notice may be dispensed with by agreement in writing between the hospital and employee.

(5) Nothing in this clause affects the hospital's right to dismiss an employee without notice for serious misconduct which justifies instant dismissal.

(6) Time Off During Notice Period—

Where the hospital has given notice of termination to an employee who has completed one month's continuous service, that employee shall, for the purpose of seeking other employment be entitled to be absent from work up to a maximum of eight ordinary hours without deduction of pay. The time off shall be taken at times that are convenient to the employee after consultation with the hospital.

Provided that this subclause shall not apply to a casual employee.

(7) Certificate of Service

Where an employee whose service terminates requests a certificate of service, a certificate signed by the hospital stating the name of the employee, the period of service, whether the service was full time or part time and the classifications in this Agreement in which work has been carried out, shall be provided.

9.—NEW EMPLOYEES

A copy of this agreement shall be made available to new employees prior to appointment.

10.—TIME NOT WORKED

The employee shall not be entitled to payment for any period of unauthorised absence.

11.—STAND DOWN

(1) (a) The hospital is entitled to deduct payment for any day or part of a day on which an employee (including an apprentice) cannot be usefully employed because of industrial action by any of the unions party to this Agreement or by any other association or union.

(b) If an employee is required to attend for work on any day but because of failure or shortage of electric power work is not provided, such employee shall be entitled to two hours' pay and further, where any employee commences work he/she shall be provided with four hours' employment or be paid for four hours' work.

(2) The provisions of paragraph (1) of this subclause also apply where the employee cannot be usefully employed through any cause which the hospital could not reasonably have prevented but only if, and to the extent that, the hospital and the union or unions concerned so agree or, in the event of disagreement, the Western Australian Industrial Relations Commission so determines.

(3) Where the stoppage of work has resulted from a breakdown of the hospital's machinery the WAIRC, in determining a dispute under paragraph (b) of this subclause, shall have regard for the duration of the stoppage and the endeavours made by the hospital to repair the breakdown.

12.—RELIEF AT OTHER LOCATIONS

An employee required to relieve away from his/her usual place of work shall be provided with transport, free of charge, from his/her home to work and return, or, be paid the car allowance provided in Clause 26 -Fares and Motor Vehicle Allowance of this Agreement.

13.—CONFIDENTIALITY

Information relating to the hospital, its customers or activities may not be released or divulged by the employee to a third party other than in the proper performance of the employee's obligations under this Agreement.

This shall not prevent the employee from seeking representation by an accredited official of his or her union.

14.—PART-TIME

(1) A part time employee shall be guaranteed a minimum number of hours per roster period.

(2) (a) A part time employee shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which he/she is engaged only in the proportion which his/her ordinary weekly hours averaged over the qualifying period, bears to 38

(b) A part time employee shall be allowed annual leave, sick leave, bereavement leave and study leave in the same manner as full time employees. Payment for such leave shall be in the same ratio as his/her ordinary weekly hours, averaged over the qualifying period, bears to 38.

(3) A part time employee may by agreement work additional hours at ordinary rates subject to the normal rostering parameters of a full time employee.

Where there is no such agreement the employee shall be paid for any additional hours at overtime rates.

15.—CASUAL

(1) A casual shall be engaged on an hourly basis with no guarantee of continual or additional employment.

(2) A casual shall not be employed for a period exceeding 4 weeks.

(3) A casual shall be paid 1/38th of the total rate prescribed in Clause 21—Wages of this Agreement for each hour worked, plus 20% additional loading.

(4) A casual shall not receive any of the leave entitlements prescribed in this Agreement (long service leave excepted).

16.—HOURS

(1) The ordinary hours of work shall average 38 per week and shall not exceed 152 hours in twenty-eight consecutive days.

Provided that, where the hospital and the majority of employees concerned agree, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days.

(2) (a) Day Worker

The ordinary hours of work of a day worker may be worked between 6 am and 6 pm on any day of the week Monday to Friday inclusive.

The provisions of this paragraph may be departed from by agreement between the hospital and the employee(s) concerned.

(b) Shift Worker

The ordinary hours of work of a shift worker may be worked on any day of the week Monday to Sunday inclusive.

(3) (a) The 38 hour week shall be worked by each full time employee working 19 eight hour days and having one rostered day off (RDO) in each four week cycle.

(b) At least 50% of RDOs will be rostered on a Monday or Friday.

(c) RDOs shall be arranged so that they do not fall on a public holiday prescribed in this Agreement.

(d) RDOs will be rostered 6 months in advance provided that the roster may be altered by the hospital giving four weeks notice or by agreement between the hospital and the employee(s) concerned.

(e) The provisions of this subclause may be departed from by agreement between the hospital and employee(s) concerned provided that where, in any arrangement of ordinary hours, shifts of longer than 10 hours are introduced—

- (i) the hospital and the employees concerned shall be guided by the Occupational Health and Safety provisions of the A.C.T.U. Code of Conduct on 12-hour shifts (as exhibited in the Western Australian Industrial Relations Commission on 11th April 1990);
- (ii) proper health monitoring procedures shall be introduced;
- (iii) suitable roster arrangements shall be made; and
- (iv) proper supervision shall be provided.

12-hour shifts may be worked by agreement between the hospital and employee(s) concerned provided the hospital has given the relevant union(s) notice in writing that such shifts are to be worked.

17.—OVERTIME

(1) All time worked in excess of the ordinary working hours on any day shall be paid for as hereunder—

- (a) Time and one half for the first 2 hours on any day Monday to 12.00 midday Saturday and double time thereafter.
- (b) Double time on a Sunday or after 12.00 midday on a Saturday.
- (c) Double time for all overtime worked consecutively with a rostered shift on a Saturday.
- (d) Double time and a half for all overtime worked on a public holiday.

(2) Where the hospital and the employee agree, time off in lieu of payment for overtime may be allowed proportionate to the payment to which the employee is entitled. Such time-off shall be taken at a time convenient to the hospital provided that the overtime is made up within 28 days from the time when it became due.

(3) In calculating overtime each day shall stand alone.

(4) An employee recalled for duty outside his/her normal working hours shall be paid a minimum of 3 hours at double time, and in addition thereto, all reasonable expenses incurred in returning to duty.

(5) Where an employee who has not been notified the previous day or earlier that he/she is required to work overtime, works such overtime for an hour or more, the hospital shall ensure that he/she is provided with any of the usual meals occurring during such overtime or be paid \$6.50 for each meal.

(6) The hospital may require any employee to work reasonable overtime at overtime rates.

(7) (a) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that an employee has at least ten consecutive hours off duty between the work of successive days.

(b) An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least ten consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If, on the instructions of the employer, such an employee resumes or continues work without having had such ten consecutive hours off duty, the employee shall be paid at double rates until released from duty and shall then be entitled to be absent for such period of ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(d) The provisions of this subclause shall apply in the case of shift employees who rotate from one shift to another, as if eight hours were substituted for ten hours when overtime is worked—

- (i) for the purpose of changing shift rosters; or
- (ii) where a shift employee does not report for duty; or
- (iii) where a shift is worked by arrangement between the employees themselves.

(e) Overtime worked as a result of a recall shall not be regarded as overtime for the purpose of this subclause. Due consideration shall however be given to ensuring that employees who work more than 3 hours of overtime as a result of a recall receive adequate rest so as to be fit for duty.

18.—ON CALL

(1) For the purpose of this Agreement an employee is on call when required by the hospital to remain at such a place as will enable the hospital to readily contact him or her during the hours for which he or she has been placed on call. An employee is also on call when required to carry a mobile telephone or beeper and to remain within a reasonable radius of the hospital.

(2) (a) An employee on call shall be paid an hourly allowance of \$2.45. Provided that payment in accordance with this paragraph shall not be made with respect to any period for

which payment is otherwise made in accordance with the provisions of this Agreement when the employee is recalled to work.

(b) Where the hospital supplies the employee with a mobile telephone or beeper, the employee shall be paid 75% of the rate prescribed in paragraph (a).

Minimum Call Out

(3) An employee who is called out to work when on call shall be paid a minimum of 3 hours at double time provided that if the employee is called out within 3 hours of starting work on a previous call he/she shall not be entitled to any further payment for the time worked within that period of three hours.

(4) If an employee is recalled to work he/she shall be provided with transport, free of charge, from his/her home to work and return, or, be paid the car allowance provided in Clause 26—Fares and Motor Vehicle Allowance of this Agreement.

19.—MEAL AND MEAL HOURS

(1) (a) Meal breaks shall be a minimum of 30 minutes and a maximum of one hour other than by agreement and shall not be counted as time worked.

(b) No employee shall be compelled to work for more than 5 hours consecutively without a meal break.

(c) By agreement between the hospital and the employee or employees concerned, an employee or employees may work in excess of five hours, but not more than six, at ordinary rates of pay without a meal break.

(d) The time of taking a scheduled meal break or rest break by one or more employees may be altered by the hospital if it is necessary to do so in order to meet a requirement for continuity of operations.

(e) The hospital may stagger the time of taking a meal or rest break to meet operational requirements.

(f) When an employee is required for duty during the employees usual meal interval and the meal interval is thereby postponed for more than half an hour, the employee shall be paid at overtime rates until the employee gets the meal interval.

(2) One ten minute tea break shall be allowed during each shift and shall be taken when convenient to the hospital without deduction of pay for such time. During each day shift, the break shall be taken during the morning.

(3) An employee who has not been notified the previous day or earlier that he or she is required to attend work at a time when a meal is usually taken shall be provided with such a meal.

20.—HIGHER DUTIES

(1) An employee who is capable of performing and does perform all duties of a position which attracts a higher rate of pay than that which he or she usually performs shall be entitled to the higher rate whilst so engaged.

(2) When an employee performs some, but not all, of the duties of the position a rate of pay less than the rate the position normally attracts can be paid by agreement between the hospital and employee.

(3) Provided that payment for higher duties shall not apply to an employee required to act in another position while the incumbent is taking a rostered day off in accordance with Clause 16—Hours of this Agreement.

21.—WAGES

(1) The minimum weekly rate payable to **METAL TRADES** employees (other than apprentices) classified in accordance with clause 6—Classification Structure of this Agreement, shall incorporate the base rate, supplementary payment and enterprise bargaining component, giving a total all purpose rate as follows—

Column A	Total rate per week with effect from 17 May 1995 incorporating base rate, supplementary payment and enterprise bargaining component
Column B	A 5% increase payable from the first pay period commencing on or after 21 September 1996

Column C A further and final 5% increase payable on and from the first pay period commencing on or after 2 December 1996

Wage Group	Column A	Column B	Column C
Level C 14	355.40	373.20	391.80
Level C 13	372.10	390.70	410.20
Level C 12	394.60	414.30	435.00
Level C 11	415.50	436.30	458.10
Level C 10	447.20	469.60	493.00
Level C 9	468.10	491.50	516.10
Level C 8	488.90	513.30	539.00
Level C 7	509.80	535.30	562.10
Level C 6	551.50	579.10	608.00
Level C 5	572.40	601.00	631.10

(2) The minimum weekly rate payable to **BUILDING TRADES** employees (other than apprentices) classified in accordance with clause 6—Classification Structure of this Agreement, shall incorporate the base rate, special payment and enterprise bargaining component, giving a total all purpose rate as follows:

Column A Total rate per week with effect from 17 May 1995 incorporating base rate, supplementary payment and enterprise bargaining component

Column B A 5% increase payable from the first pay period commencing on or after 21 September 1996

Column C A further and final 5% increase payable on and from the first pay period commencing on or after 1 December 1996

Wage Group	Column A	Column B	Column C
Bricklayers, carpenters, joiners, painters, signwriters, glaziers, plasterers, plumbers	469.90	493.40	518.10
Plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act	453.80	476.50	500.30
Trades' Assistant	427.00	448.40	470.80

(3) Leading Hand:

In addition to the total rate prescribed in subclause (1) or (2) a leading hand shall be paid—

	\$
(a) if placed in charge of not less than three and not more than ten other workers	17.50
(b) if placed in charge of more than ten and not more than twenty other workers	26.80
(c) if placed in charge of more than twenty other workers	34.60

(4) Tool Allowance—

(a) The hospital may require a tradesperson or apprentice to provide the tools ordinarily required by that tradesperson or apprentice in the performance of his/her trade.

(b) Where the hospital does not provide a tradesperson with the tools ordinarily required by that tradesperson in the performance of his/her trade the hospital shall pay a weekly tool allowance of—

Bricklayer	13.00
Plasterers	14.90
Carpenters, Joiners & Plumbers	18.10
Painters, Glaziers, Signwriters	4.50
Metal Tradesperson	9.70

(c) Where the hospital does not provide an apprentice with the tools ordinarily required by that apprentice in the performance of his/her trade, the apprentice shall be paid that percentage of the allowance prescribed in paragraph (b) which appears against the year of apprenticeship in subclause (5) of this clause.

(d) Any tool allowance paid pursuant to paragraph (b) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this clause.

(e) The hospital shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(f) A tradesperson or apprentice shall replace or pay for any tools supplied by the hospital if lost through the employee's negligence.

(5) Apprentices—

(a) Wage per week expressed as a percentage of the building tradesperson's or metals C10 rate—

Four Year Term	%
First year	42
Second year	55
Third year	75
Fourth year	88
Three and a Half Year Term	
First six months	42
Next year	55
Next year	75
Final year	88
Three Year Term	
First year	55
Second year	75
Third year	88

(b) Minimum Wage—

Notwithstanding the provisions of this subclause, no apprentice, twenty-one years of age or over, shall be paid less than \$332.00 per week as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this Agreement, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than \$332.00.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

22.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.

Provided that an employee who is absent from duty (other than on annual leave, long service leave, holidays prescribed under this agreement, paid sick leave, workers' compensation or bereavement leave) shall not be paid for the period of absence and shall have his/her fortnightly pay reduced accordingly.

(2) Payment by Cheque or Electronic Fund Transfer—

Wages shall be paid fortnightly by electronic funds transfer into one or two accounts nominated by the employee held at any major bank, building society or credit union.

Any costs associated with the establishment by the employee of such an account and of the operation of it shall be borne by the employee.

(3) Termination of Employment—

An employee who lawfully leaves the employment or is dismissed for reasons other than misconduct shall be paid all monies due at the termination of service with the hospital.

Provided that in the case of an employee whose ordinary hours are arranged in accordance with subclause (3)(a) of Clause 16.—Hours of this Agreement and who is paid average pay and who has not taken the day off due to the employee during the work cycle in which the employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle.

Provided further, where the employee has taken a day off during the work cycle in which the employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.

(4) Pay Advice Slip

Each employee shall be provided with a pay advice slip on each day that wages are paid. The pay advice slip shall detail—

- the rate of wage;
- the hours worked including overtime;
- the number of ordinary hours for which payment has been made;

- (d) the total number of hours if any which the employee is in credit or debit;
- (e) the gross wage;
- (f) the net wage;
- (g) the hospital funded superannuation component;
- (h) any allowances paid;
- (i) any deductions made including details of any salary sacrifice;
- (j) the amount of accrued time off and annual leave;
- (k) the composition of any annual leave payment;
- (l) the composition of any termination payment.

(5) Calculation of Hourly Rate—

The ordinary rate per hour shall be calculated by dividing the appropriate weekly rate by 38.

23.—SHIFT WORK

(1) (a) The loading on the ordinary rates of pay for an employee who works an afternoon shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on weekdays shall be 15%

(b) The provisions of paragraph (a) of this subclause do not apply to an employee who on any weekday commences his/her ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.

(c) The loading on ordinary rates of pay for an employee who works a shift between the hours of 6.00 pm and 7.30 am on a weekday shall be 15%.

(2) An employee rostered to work ordinary hours between midnight Friday and midnight on the following Saturday shall be paid a loading of 50% on actual hours worked during this period.

(3) An employee rostered to work ordinary hours between midnight Saturday and midnight on the following Sunday shall be paid a loading of 75% on actual hours worked during this period.

(4) Where an employee works a broken shift each portion of that shift shall be considered a separate shift for the purpose of this clause.

(5) Where the ordinary hours of work span 12.00 midnight on a Friday or Saturday night the additional payments for shift work and work on Saturday or Sunday shall be made by calculation for each part of the shift according to the rate applicable for additional payment for shift work and work on Saturday or Sunday as the case may be.

(6) An employee may transfer from being a day worker to being a shift worker and *vice versa* by agreement with the hospital.

24.—CALCULATION OF PENALTIES

Where the employee works hours which would entitle him or her to payment of more than one of the penalties payable in accordance with the overtime, shift and weekend penalties, or public holiday provisions of this Agreement, only the highest of any such penalty shall be payable.

In the case of casuals any such penalty shall be in addition to the casual loading.

25.—LAUNDRY AND UNIFORMS

(1) (a) Where the hospital requires a uniform to be worn, an adequate supply of such uniforms shall be provided free of cost to the employee on engagement.

(b) Thereafter uniforms will be replaced on an 'as required' basis provided that the employee when a new uniform is issued shall be required to return the replaced uniform.

(c) Uniforms provided by the hospital shall at all times remain the property of the hospital and must be returned to the hospital on termination.

A failure to return hospital uniforms may lead to a delay in the processing of any termination payment.

(d) Uniforms shall not be worn other than in the course of, and in travelling to and from, employment.

(2) The cost of laundering uniforms shall be met by the employee.

(3) Employees shall be responsible for the provision of appropriate clean and tidy footwear.

(4) Nothing in this clause shall prevent the hospital and the employee making other arrangements as to laundry and uniforms not less favourable to the employee.

(5) The provisions of this clause shall not detract from the hospital's obligation pursuant to section 19 of the *Occupational Health Safety and Welfare Act 1984-1987* to provide employees with adequate personal protective clothing and equipment where it is not practicable to avoid the presence of hazards at the workplace.

26.—FARES AND MOTOR VEHICLE ALLOWANCE

(1) An employee required to work outside the hospital during his or her normal working hours shall be paid any reasonable travelling and accommodation expenses incurred provided that travelling expenses shall not be paid where an allowance is paid in accordance with subclause (2) hereof.

(2) An employee required and authorised to use his or her own motor vehicle in the course of his duties shall be paid an allowance of not less than 43.5 cents per kilometre.

(3) The rate prescribed in subclause (2) shall be adjusted from time to time to reflect variations in the rate applicable to travel in the metropolitan area (over 1600cc—2600cc) prescribed in the Public Service Award No. PSA A4 of 1989.

(4) Nothing in this clause shall prevent the hospital and the employee making other arrangements as to car allowance not less favourable to the employee.

27.—SUPERANNUATION

(1) The hospital shall contribute on behalf of the employee in accordance with the requirements of the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.

(2) The hospital shall initially contribute an amount equal to 6% of the employee's ordinary time earnings and shall thereafter increase the level of contribution in accordance with the provisions of the *Superannuation Guarantee (Administration) Act 1992 (Cth)*.

(3) Contributions shall at the option of the employee be paid into either—

- (a) the Health Employees' Superannuation Trust Australia (HESTA) fund;
- (b) the National Catholic fund; or
- (c) the Private Hospital Employees Superannuation Fund.

(4) Contributions into the nominated fund shall be paid monthly.

(5) Contributions shall continue to be paid on behalf of an employee in receipt of payments under the *Workers Compensation and Assistance Act 1981 (WA)*.

(6) (a) An employee may elect in writing to receive a superannuation benefit in lieu of part of the salary to which he or she is otherwise entitled under this Agreement.

(b) An employee may not sacrifice more than 10% of salary.

(c) This arrangement shall remain in force until terminated by mutual agreement or by either the hospital or the employee providing one calendar month's notice.

28.—ANNUAL LEAVE

Entitlement

(1) (a) Each employee shall be entitled to four weeks annual leave at ordinary rates of pay in respect of each year of service.

"service" shall not include any period of unpaid leave other than the first 3 months of unpaid sick leave and the first month of workers' compensation leave.

(b) The entitlement accrues *pro rata* on a weekly basis.

(2) A continuous shift employee shall be granted additional leave at the rate of 1.5 hours for each Sunday worked to a maximum of 38 hours per year of service.

Rate of Pay

(3) An employee shall be paid for any period of annual leave prescribed in this clause at the ordinary rate of wage the employee would have received as his or her payment at the time of taking the leave, and, in addition, any shift and weekend penalties which the employee would have received had the employee not proceeded on annual leave.

Where it is not possible to calculate the shift and weekend penalties the employee would have received, the employee shall be paid at the rate of the average of such payments made each week over the four weeks prior to taking the leave.

Provided that the employee when proceeding on annual leave shall not be paid less than the sum of his or her ordinary rate of wage for the period (ie excluding shift and weekend penalties) and a loading of 17.5% in respect thereof.

Timing of Payment

(4) The employee is to be paid for a period of annual leave at the time payment is made in the normal course of employment, unless the employee requests in writing that he or she be paid before the period of leave commences in which case the employee is to be so paid.

Termination

(5) If an employee's employment terminates, the employee shall be paid—

2.923 hours pay (at the rate prescribed by subclause (3) of this Clause) in respect of each completed week of service for which annual leave has not already been taken; and

in the case of continuous shift employees such additional leave as has accrued under subclause (2) at the date of termination.

Provided that leave loading shall only apply to leave resulting from a completed year of service.

Taking Annual Leave

(6) (a) The employee may, with the approval of the hospital, be allowed to take the annual leave prescribed by this clause before the completion of twelve month's continuous service.

(b) The annual leave prescribed in this clause may be split into portions by agreement between the hospital and the employee.

(c) When the employee requests that the annual leave be split into portions the hospital shall make every reasonable endeavour to accommodate the wishes of the employee.

(d) Where the hospital and employee have not agreed when the employee is to take annual leave either party may give the other notice of the period of time when (subject to paragraph (e) hereof) the leave is to be taken.

The minimum period of notice shall be as follows—

Period of Leave to be Taken	Notice Required
1 day	2 weeks
2 days	3 weeks
3-5 days	4 weeks
6-10 days	5 weeks
11-15 days	7 weeks
16-20 days	8 weeks
> 20 days	10 weeks

(e) Notwithstanding the provisions of paragraph (d) the taking of annual leave shall be arranged so as to ensure adequate cover at all times.

(f) Provided that leave shall be taken within 18 months following the date of accrual.

Compaction

(7) An employee who during a qualifying period towards an entitlement of annual leave was employed continuously on both a full-time and part-time basis, or a part-time basis only, may elect to take a lesser period of annual leave calculated by converting the part-time service to equivalent full-time service.

Such election is to be made in writing by the employee and approved by the hospital.

29.—PUBLIC HOLIDAYS

(1) The following days shall be considered as public holidays—

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Queen's Birthday, Christmas Day and Boxing Day.

Provided that—

(a) a day observed in lieu of the holiday may be appointed by proclamation published in the *Gazette* under the *Public and Bank Holidays Act 1972*. This shall also

apply to an additional holiday appointed by proclamation;

(b) another day may be observed in lieu of the holiday by agreement between the employee and the hospital.

(2) An employee not required to work on a day solely because that day is a public holiday or day observed in lieu thereof, shall be entitled to leave for the number of hours which he or she would otherwise be rostered to work on that day without deduction of pay.

(3) Where the employee is rostered to work ordinary hours on a public holiday, he or she shall elect to receive one of the following—

(a) ordinary rates of pay and a loading of 150% for the actual time worked on the holiday; or

(b) ordinary rates of pay and a loading of 50% for the actual time worked together with an equivalent period of time off, paid at the ordinary rate, to be taken at a time mutually acceptable to the hospital and employee.

(4) The employee shall be entitled to a day's leave in lieu of a public holiday, without deduction of pay, in respect of a public holiday which occurs during the employees' annual leave.

(5) (a) Where a public holiday falls on a day on which a continuous shift employee is rostered off duty the employee shall be entitled to an additional day's pay at ordinary rates.

(b) Where a public holiday falls on a day on which a full time employee is rostered off duty the employee shall be entitled to an additional day's pay at ordinary rates. This paragraph shall not apply to part-time employees.

(c) Provided that by agreement between the employer and employee, the employee may observe that public holiday, paid at the ordinary rate, on a day mutually acceptable to the employer and employee.

(6) The provisions of this clause shall not apply to casual employees.

30.—SICK LEAVE

(1) An employee shall accrue an entitlement to paid sick leave at the rate of 1.457 hours per completed week (76 hours per year of service).

(2) An employee who is unable to attend or remain at work on the grounds of personal ill health or injury or on account of the illness or injury of a family member residing with the employee, is entitled to be paid at ordinary rates for the number of hours the employee was rostered to work during the period of absence. Provided that—

(a) the payment shall not exceed the employee's accrued entitlement plus entitlement in advance to the end of the current year of service;

(b) where such payment exceeds the employee's accrued entitlement, the excess may be offset against any future accrual or against monies otherwise payable to the employee at the point of separation.

(3) Unused portions of sick leave entitlement shall accumulate from year to year and may be taken in any subsequent year.

(4) Notwithstanding any of the provisions of this clause payment for sick leave taken on account of the illness or injury of a family member residing with the employee shall not exceed payment for 38 hours in any one year of service.

(5) An employee shall advise the hospital as soon as reasonably practicable and if possible prior to the commencement of the shift of, the inability to attend work, the nature of illness or injury and the estimated duration of absence.

(6) (a) An employee shall be required to provide a medical certificate for any absence of two days or more.

(b) After two absences in any year of service the hospital may request in writing that the next and subsequent absences in that year, if any, shall be accompanied by a medical certificate.

(c) The provisions of this subclause shall apply whether the employee claims payment for sick leave on account of personal ill health or injury or the illness or injury of a family member residing with the employee.

(7) (a) An employee who suffers personal ill health or injury whilst on annual leave may be paid sick leave in lieu of annual leave subject to

- (i) providing a medical certificate stating the illness or injury necessitated confinement to home or hospital for seven consecutive days or more.
- (ii) the portion of annual leave coinciding with the paid sick leave is to be taken at a time agreed by hospital and employee or shall be added to the next period of annual leave.

(b) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 28—Annual Leave of this Agreement shall be deemed to have been paid with respect to the replaced annual leave.

(8) Paid leave may be withheld if the illness or injury is the result of the employee's own gross misconduct.

(9) Where an employee receives payment under this clause and subsequently receives payments in respect of the same period under the *Workers Compensation and Assistance Act 1981 (WA)*, the employee shall reimburse to the hospital the payments made under this clause and the hospital shall reinstate the employee's sick leave or other entitlements accordingly.

(10) The entitlement conferred by this clause shall be prorated in the case of a part-time employee in the same ratio as his/her ordinary weekly hours, averaged over the qualifying period, bears to 38.

31.—LONG SERVICE LEAVE

(1) The long service leave provisions published in Volume 73 of the *Western Australian Industrial Gazette* at pages 1 to 4 inclusive as updated from time to time, are hereby incorporated in and shall be deemed to be part of this Agreement, providing that long service leave shall not accrue on workers' compensation leave in excess of one month.

(2) Provided that the leave to which an employee shall be entitled or deemed to be entitled shall be as provided in this clause—

Where an employee has completed at least 10 years' service the amount of leave shall be—

- (a) in respect of 10 years service so completed—eight and two thirds weeks leave;
- (b) in respect of the next 5 years service completed after such 10 years—four and one thirds weeks leave;
- (c) in respect of each 10 years service completed after such 15 years—eight and two thirds weeks leave;
- (d) on the termination of the employee's employment—
 - (i) by his/her death;
 - (ii) in any circumstances otherwise than by the employer for serious misconduct;

in respect of the number of years' service with the employer completed since he/she last became entitled to an amount of long service leave, a proportionate amount on the basis of eight and two thirds weeks for 10 years service.

(3) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the hospital and the employee.

(4) By agreement between the hospital and employee, a part time employee or an employee whose hours have changed from part time to full time may take his or her long service leave entitlement as a reduced period of full time equivalent time off. Such agreement shall not be unreasonably withheld by the hospital.

32.—PARENTAL LEAVE

(1) Interpretation

In this Clause—

“**adoption**”, in relation to a child, is a reference to a child who—

- (a) is not the natural child or the step-child of the employee or the employee's spouse;
- (b) is less than 5 years of age; and

- (c) has not lived continuously with the employee for 6 months or longer;

“**continuous service**” means service under an unbroken contract of employment and includes:

- (a) any period of parental leave; and
- (b) any period of authorised leave or absence.

“**expected date of birth**” means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee's spouse, as the case may be, to give birth to a child;

“**parental leave**” means leave provided for by subclause (2) of this clause;

“**spouse**” includes a *de facto* spouse.

(2) Entitlement to parental leave

(a) Subject to this subclause and to subclauses (3) and (4) hereof, an employee, other than a casual employee, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of—

- (i) the birth of a child to the employee or the employee's spouse; or
- (ii) the placement of a child with the employee with a view to the adoption of the child by the employee.

(b) An employee is not entitled to take parental leave unless he or she—

- (i) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the hospital; and
- (ii) has given the hospital at least 10 weeks' written notice of his or her intention to take the leave;
- (iii) has notified the hospital of the dates on which he or she wishes to start and finish the leave.

An employee shall not be in breach of this clause as a consequence of failure to give the required notice if such failure is occasioned by the confinement occurring earlier than the expected date.

(c) An employee is not entitled to take parental leave at the same time as the employee's spouse but this subsection does not apply to—

- (i) one week's parental leave taken by the male parent immediately after the birth of the child; or
- (ii) three week's parental leave taken by the employee and the employee's spouse immediately after a child has been placed with them with a view to their adoption of the child.

(d) The entitlement to parental leave is reduced by any period of parental leave taken by the employee's spouse in relation to the same child, except the period of one week's leave referred to in paragraph (c)(i) of this subclause.

(3) Certification

(a) An employee who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the hospital a certificate from a medical practitioner stating that the employee or the employee's spouse, as the case may be, is pregnant and the expected date of birth.

(b) An employee who has given notice of his or her intention to take parental leave for adoption, is to provide to the hospital—

- (i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
- (ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.

(4) Notice of spouse's parental leave

(a) An employee who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the hospital of particulars of any period of parental leave taken or to be taken by the employee's spouse in relation to the same child.

(b) Any notice given under paragraph (a) of this subclause is to be supported by a statutory declaration by the employee as to the truth of the particulars notified.

(5) Transfer to a safe job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the hospital deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the hospital may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) of this clause.

(6) Maternity leave to start 6 weeks before birth

A female employee who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave 6 weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the employee is fit to work.

(7) Variation of Period of Parental Leave

(a) Provided the aggregate of any leave (including leave taken pursuant to subclauses (5) and (9) of this clause) does not exceed the period to which the employee is entitled under subclause (2) hereof—

- (i) the period of parental leave may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
- (ii) the period may be further lengthened by agreement between the employee and the hospital.

(b) The period of parental leave may, with the consent of the hospital, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(8) Cancellation of Parental Leave

(a) Parental leave, other than adoption leave, applied for but not commenced, shall be cancelled when the pregnancy of the employee or the employee's spouse terminates other than by the birth of a living child.

(b) Where the pregnancy of an employee on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the hospital which shall not exceed four weeks from the date of notice in writing by the employee to the hospital that she desires to resume work.

(9) Special Maternity Leave and Sick Leave—

(a) Where the pregnancy of an employee not then on parental leave terminates after 28 weeks other than by the birth of a living child then

- (i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
- (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on parental leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and parental leave shall not exceed the period to which the employee is entitled under subclause (2) hereof.

(c) For the purposes of subclauses (10), (12) and (13) hereof, parental leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who

was transferred to a safe job pursuant to subclause (3) of this clause, to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(10) Parental Leave and Other Leave Entitlements

Provided the aggregate of any leave (including leave taken pursuant to subclauses (5) and (9) of this clause) does not exceed the period to which the employee is entitled under subclause (2) hereof—

- (a) An employee may, in lieu of or in conjunction with parental leave, take any annual leave, long service leave or any part thereof or accrued time off to which he or she is then entitled.
- (b) Paid sick leave or other paid authorised absences (excluding annual leave, long service leave or accrued time off), shall not be available to an employee during his or her absence on parental leave.

(11) Return to work after parental leave

(a) An employee shall confirm his or her intention of returning to work by notice in writing to the hospital given not less than four weeks prior to the expiration of the period of parental leave.

(b) On finishing parental leave, an employee is entitled to the position he or she held immediately before starting parental leave.

(c) If the position referred to in paragraph (b) of this subclause is not available, the employee is entitled to an available position—

- (i) for which the employee is qualified; and
- (ii) that the employee is capable of performing, most comparable in status and pay to that of his or her former position.

(d) Where, immediately before starting parental leave, an employee was acting in, or performing on a temporary basis the duties of, the position referred to in paragraph (b) of this subclause, that subsection applies only in respect of the position held by the employee immediately before taking the acting or temporary position.

(12) Effect of parental leave on employment

Absence on parental leave—

- (a) does not break the continuity of service of an employee; and
- (b) is not to be taken into account when calculating the period of service for the employee.

(13) Termination of Employment

(a) An employee on parental leave may terminate his or her employment at any time during the period of leave by notice given in accordance with this Agreement.

(b) The hospital shall not terminate the employment of an employee on the grounds of pregnancy or absence on parental leave, but otherwise the rights of the hospital in relation to termination of employment are not hereby affected.

(14) Replacements—

(a) A replacement is a person specifically engaged as a result of an employee proceeding on parental leave.

(b) The hospital shall, before engaging a replacement under this subclause, inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(c) The hospital shall, before engaging a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his or her rights under this clause, inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring the hospital to engage a replacement.

33.—BEREAVEMENT LEAVE

(1) On the death of a spouse or de facto spouse, child or step-child, parent or parent in law, brother, sister, or any other person who immediately before that person's death lived with the employee as a member of the employee's family, the employee is entitled to bereavement leave, without loss of ordinary time earnings, of up to two (2) days.

(2) Bereavement leave shall at the discretion of the employee be taken at any time up to and including the two days following the day of the funeral.

(3) Payment for such leave may be subject to the employee providing proof of the death.

(4) Bereavement leave is not to be taken where the employee is absent on another form of leave or would not otherwise have been on duty unless the absence has been taken to enable the employee to be with a dying relative.

34.—TRAINING LEAVE

The Hospital is committed to a skilled workforce and all employees have access to training in order to meet the needs of the enterprise. Applications for paid leave to attend training courses during ordinary working hours will be considered on a case by case basis where the course is relevant to the employee's work and the needs of the hospital.

Reimbursement of costs associated with fees and textbooks will be considered in a similar manner.

Where possible and appropriate, approved training shall be accredited.

35.—TIME OFF WITHOUT PAY

Time off without pay for whatever purpose may be granted by agreement between the hospital and the employee.

36.—INTRODUCTION OF CHANGE AND REDUNDANCY

(1) Interpretation

In this clause—

- (a) **“employee”** does not include an employee engaged on a casual or temporary basis or on a fixed term contract;
- (b) **“redundant”** means being no longer required by the hospital to continue doing a job because the hospital has decided that the said job will not be done by any employee.
- (c) For the purposes of this clause, an action of the hospital has a **“significant effect”** on an employee if—
- (i) there is to be a major change in the composition, operation or size of, or skills required in, the hospital's workforce that will affect the employee; or
 - (ii) there is to be elimination or reduction of a job opportunity, promotion opportunity or job tenure for the employee; or
 - (iii) in the case of a full time employee, the guaranteed hours of work are to increase or decrease; or
 - (iv) the employee is required to be retrained; or
 - (v) the employee is to be required to transfer to another job or work location; or
 - (vi) the employee's job is to be restructured.

(2) (a) Employee to be Informed

Where the hospital has decided to—

- (i) take action that is likely to have a significant effect on an employee; or
 - (ii) make an employee redundant,
- the employee shall be informed by the hospital, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be.

(b) Discussions to occur

The hospital shall thereafter hold discussions with the employee affected as to—

- (i) the likely effects of the action or the redundancy in respect of the employee; and
- (ii) measures that may be taken by the employee or hospital to avoid or minimise a significant effect.

For the purpose of such discussion the hospital shall provide in writing to the employee concerned, all relevant

information about the action or the redundancy including the nature and expected effects on the employee of what is proposed and other matters likely to affect the employee, provided that the hospital shall not be required to disclose confidential information the disclosure of which may seriously harm the hospital's interests.

(3) Union to be informed

Where the hospital has made a definite decision to introduce major changes that are likely to have significant effects on employees, the hospital shall notify and hold discussions with the relevant union(s).

(4) Severance Pay

(a) In addition to the period of notice prescribed in Clause 8.—Separation of this Agreement, for ordinary termination, an employee whose employment is terminated on the grounds of redundancy shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period of Continuous Service	Severance Pay
Less than 1 year	Nil
1 year but less than 2 years	1 weeks
2 years but less than 3 years	3 weeks
3 years but less than 4 years	5 weeks
4 years but less than 5 years	7 weeks
5 years but less than 6 years	9 weeks
Thereafter	1 week's additional pay for each additional year of service

“Weeks Pay” means the ordinary weekly rate of wage for the employee concerned.

(b) For the purpose of this clause continuity of service shall not be broken on account of—

- (i) any absence from work on account of personal sickness or accident for which an employee is entitled to claim sick pay as prescribed by this agreement or on account of leave lawfully granted by the hospital; or
- (ii) any absence with reasonable cause, proof whereof shall be upon the employee; or
- (iii) any absence on approved leave without pay.

Provided that in the calculation of continuous service under this subclause any time in respect of which an employee is absent from work except time for which an employee is entitled to claim annual leave, sick pay, long service leave and public holidays as prescribed by this agreement shall not count as time worked.

(c) Service by the employee with a business which has been transmitted from one hospital to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave Provisions published in Volume 73 of the *Western Australian Industrial Gazette* at pages 1-4 shall also constitute continuous service for the purpose of this clause.

(5) Employee Leaving During Notice—

An employee whose employment is to be terminated on the grounds of redundancy may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the employee remained with the hospital until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(6) Alternative Employment—

The hospital, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the hospital obtains acceptable alternative employment for an employee.

(7) Leave for Job Interviews

(a) An employee who has been given notice that he or she has been, or will be, made redundant shall during the period of notice of termination be entitled to be absent from work up to a maximum of eight ordinary hours during each week of notice without deduction of pay for the purpose of being interviewed for further employment.

(b) An employee who claims to be entitled to paid leave under paragraph (a) shall, at the request of the hospital, be

required to produce reasonable proof of attendance at an interview or the employee shall not receive payment for the time absent.

(8) Notice to Commonwealth Employment Service—

Where a decision has been made to terminate employees in circumstances of redundancy, the hospital shall, subject to the agreement of the employees concerned, notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

37.—TIME AND WAGES RECORD

(1) The employer bound by this industrial agreement shall maintain a time and wages record for each employee.

(2) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(3) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(4) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(5) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(6) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(7) A person who has given a notification referred to in paragraph (b) of subclause (5) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(8) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to the employer.

(9) The employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(10) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(11) The employer must ensure that any notification from an employee or former employee in accordance with this clause shall be retained for not less than seven (7) years.

38.—INTERVIEWS

(1) An accredited representative of the union shall be entitled to enter the business premises of the hospital and interview an employee subject to the following—

- (a) on arrival at the hospital the union representative shall seek permission to enter the premises from the Manager, Employee Relations or, in her/his absence, the Director of Engineering and Building or Chief Engineer;
- (b) agreement between the union representative and the hospital shall be sought as to where, when and subject to what conditions the employee may be interviewed or work inspected.

(2) Where agreement is not reached the union representative may, on giving prior notice by phone or in writing to the Manager, Employee Relations or, in her/his absence, the Director of Engineering and Building or Chief Engineer, enter the hospital during ordinary working hours for the purpose of interviewing employees.

Provided that such officer shall not hamper or otherwise hinder the employees in the carrying out of their work. The hospital shall determine whether employees are being hampered or hindered in their work.

(3) If access has not been gained in accordance with the provisions of this clause then the union representative shall leave immediately upon a request from the hospital.

39.—NOTICES & COPY OF AGREEMENT

The hospital shall provide a notice board in a place where it may be conveniently and readily seen for the posting of union notices. The hospital shall also provide a copy of this agreement in a place where it may readily be seen.

40.—DISPUTE SETTLEMENT

Where any questions, disputes or difficulties arise concerning the operation of this Agreement—

(1) Step 1

As soon as practicable after the issue or claim has arisen, it shall be considered jointly by the Chief Engineer, the employee or employees concerned and where the employee(s) so request(s), the workplace representative.

(2) Step 2

If the dispute is not resolved the issue or claim shall be considered jointly by the Manager Chief Engineer, the Director of Building and Engineering Services, the employee or employees concerned and where the employee(s) so request(s), the workplace representative who shall attempt to settle the dispute.

(3) Step 3

If the dispute is not resolved the issue or claim shall be considered jointly by the Manager Employee Relations, the Director of Building and Engineering Services, the employee or employees concerned and where the employee(s) so request(s), an official of the union who shall attempt to settle the dispute.

(4) Step 4

If the dispute is not resolved it may then be referred to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

(5) Throughout all steps of the procedure all relevant facts shall be clearly identified and recorded.

(6) On each occasion sensible time limits shall be agreed upon for the completion of each step of the procedure.

41.—WORKPLACE REPRESENTATIVES

An employee appointed as a workplace representative shall, upon notification in writing by the union to the hospital be recognised as an accredited representative of the union to which he or she belongs. Management shall make itself reasonably available to the representative for the purpose of discussing and resolving problems arising in the workplace.

Workplace representatives shall by agreement with the hospital be granted a reasonable amount of paid leave to attend trade union training courses. Requests shall be made in writing and be authorised by an official of the relevant union.

42.—SPECIAL RATES AND PROVISIONS

(1) **Boiler Work** An employee required to work in a boiler which has not been cooled down shall be paid at the rate of time and one-half for each hour or part of an hour so worked.

(2) **Hot Work** An employee shall be paid an allowance of 33 cents per hour when the employee works in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees celsius.

(3) **Insulation** An employee handling charcoal, pumice, granulated cork, silicate of cotton, fibreglass, insulwool, slag wool, limpet fibre, vermiculite or other recognised insulating material of a like nature shall be paid an allowance of 44 cents per hour.

(4) **Protective Equipment—**

- (a) The hospital shall have available a sufficient supply of protective equipment (as, for example, goggles (including anti-flash goggles), glasses, gloves, mitts, aprons, sleeves, leggings, gumboots, ear protectors, helmets, or other efficient substitutes thereof) for use by employees when engaged on work for which some protective equipment is reasonably necessary.
- (b) An employee shall sign an acknowledgment when issued with any article of protective equipment and shall return that article to the hospital when finished using it or on leaving employment.
- (c) An employee to whom an article of protective equipment has been issued shall not lend that article to another employee and if the employee does both employees shall be deemed guilty of wilful misconduct.
- (d) An article of protective equipment which has been used by an employee shall not be issued by the hospital to another employee until it has been effectively sterilised but this paragraph only applies where sterilisation of the article is practicable and is reasonably necessary.
- (e) Adequate safety gear (including insulating gloves, mats and/or shields where necessary) shall be provided by the hospital for employees required to work on live electrical equipment.

(5) **Toxic Substances** An employee using toxic substances or materials of a like nature shall be paid an allowance of \$12.00 per week for each week or part thereof that he/she is on duty.

(6) An electronics trades person, an electrician—special class, an electrical fitter and/or armature winder or an electrical installer who holds and, in the course of employment may be required to use, a current “A” Grade or “B” Grade licence issued pursuant to the relevant regulation in force on the 28th day of February 1978 under the *Electricity Act 1945*, shall be paid an allowance of \$14.00 per week.

43.—WORKPLACE AGREEMENTS

The hospital agrees to be bound by the provisions of this Agreement and as such commits, for the duration of this Agreement, not to enter into Workplace Agreements under the *Workplace Agreements Act 1993* with employees who would otherwise fall within the scope of this Agreement.

44.—SIGNATORIES TO AGREEMENT

Signed for and on behalf of
ST JOHN OF GOD HOSPITAL SUBIACO (INC)—
(signed by RA Baker)
In the presence of—
(Signed by S Phillips)

Signed for and on behalf of
AUTOMOTIVE, FOOD, METALS, ENGINEERING,
PRINTING AND KINDRED INDUSTRIES UNION OF
WORKERS (WA BRANCH)
common seal affixed
(Signed by J Sharp-Collett)
In the presence of—
(Signed by J Mossenton)

Signed for and on behalf of
WESTERN AUSTRALIAN BUILDERS' LABOURERS,
PAINTERS' AND PLASTERERS' UNION OF WORKERS—

common seal affixed
(Signed by D Reynolds)
In the presence of—
(Signed by L. Rowden)

Signed for and on behalf of
CONSTRUCTION FORESTRY, MINING, ENERGY, TIMBER-
YARDS, SAWMILLS AND WOODWORKERS UNION
OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH—
common seal affixed
(Signed by J McDonald)
In the presence of—
(Signed by L Rowden)

**SWAN CHRISTIAN EDUCATION ASSOCIATION
INC. (ENTERPRISE BARGAINING)
AGREEMENT 1997.
No. AG 147 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of
Western Australia, Industrial Union of Workers
and

Swan Christian Education Association Inc.

No. AG 147 of 1997.

Swan Christian Education Association Inc. (Enterprise
Bargaining) Agreement 1997.

25 August 1997.

Order:

HAVING heard Ms T. Howe on behalf of The Independent School Salaried Officers' Association of Western Australia, Industrial Union of Workers and Mr A.J. Campbell on behalf of Swan Christian Education Association Inc. and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Swan Christian Education Association Inc. (Enterprise Bargaining) Agreement 1997 as filed by the parties on the 15th day of July, 1997 be registered on and from the 25th day of August, 1997.

[L.S.] (Sgd.) A.R. BEECH,
Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Swan Christian Education Association Inc. (Enterprise Bargaining) Agreement 1997 and shall replace the Swan Christian Education Association Inc. (Enterprise Bargaining) Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Expiration of Agreement
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Objectives

10. Salary Rates
11. Agreed Efficiency Improvements
12. Agreed Entitlements
13. Other Matters
14. No Reduction
15. No Further Claims
16. No Precedent
17. Dispute Resolution Procedure
18. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between the Swan Christian Education Association Inc. (SCEA) and The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA) a registered organisation of employees (the parties).

The Swan Christian Education Association Inc. administers Armadale Christian College, Beechboro Christian School, Kalamunda Christian School, Midland Christian School, Mundaring Christian School and Swan Christian High School (the schools).

4.—SCOPE OF AGREEMENT

(1) This agreement shall apply to all teachers employed by the SCEA who are covered by the provisions of the scope of the Independent Schools' Teachers' Award 1976 (the award).

(2) The number of employees covered by this agreement is 80.

5.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on the 25th day of August, 1997 and shall apply until 31st December, 1997.

6.—EXPIRATION OF AGREEMENT

On the expiration of this agreement, and in the absence of the registration of a subsequent enterprise agreement, the provisions of this agreement shall apply until such time as a new agreement is registered and takes effect.

7.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the award.

Where there is any inconsistency between this agreement and the award, this agreement will prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

Parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with representatives of teachers in the Schools and with representatives of the SCEA.

9.—OBJECTIVES

In reaching this agreement the parties have recognised the need to—

- (1) Consolidate and develop further, initiatives arising out of the award restructuring process.
- (2) Accept a mutual responsibility to maintain a working environment which will ensure that SCEA and its staff become genuine participants and contributors to the Schools' aims, objectives and philosophy.
- (3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. SCEA and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the School and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during School time and partly during the teachers' time.
- (4) Ensure that all teaching staff meet and continue to meet the Christian criteria for membership of SCEA as it applies to members with voting rights.
- (5) Recognise that the SCEA Schools are established and maintained to give access to affordable Christian Education to as wide a cross-section of the community as possible.

- (6) Acknowledge that SCEA Schools facilitate the constructive involvement of parents in the life of the Schools and exist to provide learning and teaching opportunities that will support the Christian ethos of SCEA and its member families.
- (7) Acknowledge that each School is managed within the SCEA policy framework supplemented by policies of the relevant School.

10.—SALARY RATES

(1) The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be—

Step	From 1 July 1996 Per Annum \$	From 1 January 1997 Per Annum \$	From 1 July 1997 Per Annum \$
1	24,299	24,970	25,844
2	25,775	26,487	27,571
3	27,251	28,003	29,149
4	28,955	29,754	30,796
5	30,545	31,387	32,015
6	31,907	32,787	33,935
7	33,269	34,188	35,249
8	34,972	35,938	36,838
9	36,846	37,863	39,426
10	38,379	39,169	40,638
11	39,741	40,504	42,320
12	41,445	42,173	43,763
13	43,148	43,841	45,493

(2) In the event of any safety net adjustment being applied to the award, such adjustment shall be absorbed into the salary rates prescribed by this agreement.

11.—AGREED EFFICIENCY IMPROVEMENTS

(1) Payment for Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the award, relief teachers employed for five days or less may be engaged by the day or half day. A half day is determined as the hours usually worked in the Schools prior to or immediately following the lunch break.

(2) First Teaching Appointment

A teacher appointed to his/her first teaching position who, at the end of the initial twelve months, is deemed by the School not to have developed adequate teaching skills, may be appointed as a temporary teacher subject to paragraph (2) of Item 2—Induction of Appendix 1 of the award.

(3) Long Service Leave

Notwithstanding the provisions of subclause (1) of Clause 10.—Long Service Leave of the award, from 1st January 1995 a teacher who has completed eight years' continuous service with SCEA shall be entitled to take ten weeks' long service leave on full pay, corresponding with a completed term.

(4) Promotional Positions

While maintaining the promotion structure described in the award, the School shall have the discretion to adapt this structure to meet its educational needs. The normal process of appointment to promotional positions will be followed.

(5) Mobility of Teachers

Teachers employed continuously in the one School for a period of ten years will be encouraged to transfer to another SCEA School to a position at least comparable in status and salary to the existing position.

(6) Professional Development

The parties accept a mutual responsibility to share in the teachers' professional development and recognise that courses outside of School hours should be made available to teachers.

(7) Senior Teacher

Senior Teacher Level One and Level Two will be paid an allowance at the rate of 3.2% and 6.9% respectively based on step 13 of Clause 10.—Salary Rates of this agreement.

(8) Policies

All teaching staff agree to abide by the policies, rules and regulations of the School as determined by the Board and the School Council.

12.—AGREED ENTITLEMENTS

(1) Family Leave

- (a) A teacher who is unable to attend or remain at his/her place of employment during the normal hours of duty by reason of the ill health or injury of a family member shall be entitled to take paid leave of up to 3 days per year.
- (b) Such leave shall not accrue from year to year.
- (c) Such leave shall be debited to the teacher's accrued sick leave.
- (d) Such leave shall not prejudice a teacher's rights to special leave in accordance with the provisions of the award.

(2) Deferred Salary

Teachers may apply to the Principal to work for 4 years on 80% salary and defer the balance into an accumulation fund. In the fifth year the teacher may have leave and be paid the balance of the accumulation fund. At any time in the first three years the teacher may return to the full salary and forego the entitlement to a year's leave with pay. In this event, or if the teacher leaves the employ of SCEA for any reason whatsoever, the salary withheld will be paid in full.

13.—OTHER MATTERS

The parties agree to discuss such matters that are of relevance to either the School or the staff.

14.—NO REDUCTION

Nothing contained herein shall allow the School to reduce the salaries or conditions of an employee which prevailed prior to entering into this agreement, except where provided by this agreement.

15.—NO FURTHER CLAIMS

It is a condition of this agreement that the parties will not seek any further claims with respect to salaries or conditions during the period of this agreement unless they are consistent with the State Wage Case Principles.

16.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the School or not.

17.—DISPUTE RESOLUTION PROCEDURE

- (1) A dispute is defined as any questions, disputes or difficulties arising out of this agreement.
- (2) The objectives of this dispute resolution procedure are—
 - (a) To promote the resolution of grievances and disputes by measures based on consultation, co-operation and discussion;
 - (b) To avoid industrial confrontation within SCEA and its Schools.
 - (c) To avoid interruption to the performance of work and the consequential loss of services and wages; and
 - (d) To avoid disharmony with SCEA as a result of unresolved grievances and disputes.
- (3) The following procedure shall apply to the resolution of any dispute—
 - (a) If any employee or group of employees is dissatisfied with any matter which relates to their employment by SCEA then the employee or group of employees (as the case may be), accompanied by a representative, if desired, shall meet and discuss the grievance with their immediate superior with a view to reaching agreement regarding the matter.
 - (b) If, following the meeting contemplated by paragraph (a) of this subclause, the grievance is not resolved, then, if the immediate superior referred to in paragraph (a) of this subclause is not the Principal (of the School concerned), the employee or group of employees, along with a representative, if desired, shall meet and discuss the grievance with the Principal with a view to reaching agreement regarding the matter.

- (c) If the matter remains unresolved then the employee or group of employee, along with a representative, if desired, shall meet and discuss the grievance with the Chairman of the School Council with a view to reaching agreement.
- (d) If there has not been satisfactory resolution of the grievance, any party to the dispute may refer the dispute to the Grievance Committee of SCEA for resolution.
- (e) If there has not been a satisfactory resolution of the grievance and the dispute arises out of this agreement, any party to the dispute may refer the dispute to the Western Australian Industrial Relations Commission or the Industrial Relations Court of Australia for resolution.
- (f) While this procedure is being followed work shall continue as normal.

18.—SIGNATORIES

A.J. Campbell

B. S. Goodchild

Swan Christian Education Association Inc.

T. Howe

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers.

**TECHNICAL OFFICER—AGRICULTURAL
INSTRUCTION STAFF AGREEMENT 1997.
No. PSA AG 8 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Director General, Education Department of Western
Australia

and

The Civil Service Association of Western Australia
Incorporated.

No. PSAAG 8 of 1997.

Technical Officer—Agricultural Instruction Staff Agreement
1997.

4 September 1997.

Order:

HAVING heard Ms F. Smith on behalf of the Applicant and Mr J. Dasey on behalf of the respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Technical Officer—Agricultural Instruction Staff Agreement 1997 filed in the Commission on the 11th day of August, 1997 be registered on and from the 3rd day of September, 1997.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Technical Officer—
Agricultural Instruction Staff Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Application to Award
4. Scope of the Agreement
5. Number of Employees Covered

6. Term of Agreement
7. Definitions
8. Commuted Overtime Allowance
9. Overtime to be Worked
10. Dairy Allowance
11. Dispute Settlement Procedure
12. Signatories to this Agreement

3.—APPLICATION TO AWARD

The Award that applies to Technical Officers—Agricultural Instruction is the Government Officers Salaries, Allowances and Conditions Award 1989 No. PSA A3 of 1989. This Agreement shall be read in conjunction with that Award. The Education Department of Western Australia (CSA) Enterprise Agreement 1996 and the Education Department of Western Australia (CSA) Enterprise Agreement 1997 (“the Enterprise Agreements”) also apply to Technical Officers—Agricultural Instruction.

This Agreement must be read in conjunction with the Award and Enterprise Agreement. In the case of any inconsistencies between this Agreement and the Award or Enterprise Agreement, this Agreement shall have precedence to the extent of the inconsistencies.

4.—SCOPE OF THE AGREEMENT

This Agreement will apply to all Technical Officers—Agricultural Instruction employed by the Education Department of Western Australia.

5.—NUMBER OF EMPLOYEES COVERED

This Agreement will cover approximately 55 employees.

6.—TERM OF AGREEMENT

This Agreement shall operate from date of registration and shall remain in force for a period of two (2) years.

7.—DEFINITIONS

“Employer” shall mean the Director-General of the Education Department of Western Australia.

“Employee” shall mean all employees classified as Technical Officers—Agricultural Instruction.

“Extended Leave” shall mean a period of paid or unpaid leave in excess of 4 weeks i.e. long service leave, leave without pay, parental leave, extended sick leave, or workers’ compensation.

“GOSAC” shall mean the Government Officers Salaries, Allowances and Conditions Award 1989.

“CSA” shall mean the Civil Service Association of WA (Inc).

“Hours to be accounted for” shall mean hours actually worked and hours counted as if worked on public holidays and other approved leave (other than annual leave and extended leave).

8.—COMMUTED OVERTIME ALLOWANCE

(1) All employees covered by this Agreement who are required to work 1950 hours per annum in accordance with Clause 9.—Overtime to be Worked of this Agreement, shall receive an allowance of 15.38% of their salary, which will be counted as salary for all purposes.

(2) Part-time employees are required to work the appropriate proportion of ordinary hours and overtime in accordance with their employment contract and will receive the same proportion of this allowance.

9.—OVERTIME TO BE WORKED

The following provisions replace subclause 18(3)(a), (b)(i) & (ii), (d), (f), (g) and (j) of Clause 18.—Overtime in the GOSAC Award.

(1) In addition to the standard hours prescribed in the GOSAC Award (the equivalent of 1800 hours per year, 37 ½ hours per week, in each of 48 weeks), each employee covered by this Agreement will be required to work an extra 150 hours in each calendar year, a total of 1950 hours per year. 1950 hours (pro-rata for part-time employees) are to be accounted for by the employee during 48 weeks of the year. The majority of the additional 150 hours will be allocated at each School site and advised to employees through an equitable roster posted with reasonable notice. Unrostered overtime for unforeseen circumstances will also count towards the 150 overtime hours per annum.

(2) All time worked in excess of 1950 hours will be overtime paid at time and one half or, by agreement between the employee and employer, time in lieu taken at 1½ hours for each hour worked.

(3) Where an employee has a period of extended leave during any calendar year, they will be only required to work the appropriate proportion of 1950 hours referred to in Clause 8.—Commuted Overtime Allowance of this Agreement. This will not affect payment of the commuted overtime allowance.

10.—DAIRY ALLOWANCE

Where duties of an employee include regular milking of cows, the employee will work rostered hours, but will not be required to work more than 5 hours without a meal break.

Rostered breaks will not exceed 4 hours, but where the rostered break exceeds 1 hour, an allowance of 0.866% of normal base salary (equivalent to 20 minutes normal base salary) will be paid for every day so rostered.

The spread of ordinary hours for employees engaging in regular milking of cows will be from 6am to 6pm.

11.—DISPUTE SETTLEMENT PROCEDURE

In the event of any questions, disputes or difficulties that arise under this Agreement the following procedures shall apply—

- (1) The CSA representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a CSA representative, or a support person of their choice.
- (2) If the matter is not resolved within 5 working days following the discussion in accordance with subclause (1) hereof the matter shall be referred by the CSA representative to the Director-General of the Education Department of Western, or his/her nominee for resolution.
- (3) If the matter is not resolved within 5 working days of the CSA representative’s notification of the dispute to the Education Department of Western Australia it may be referred by either party to the Western Australian Industrial Relations Commission.

12.—SIGNATORIES TO THIS AGREEMENT

Signatories

Signed for and on behalf of

CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (Inc) by:

D. ROBINSON

Date: 4/8/97

Signed for and on behalf of the

EDUCATION DEPARTMENT OF WESTERN AUSTRALIA by:

C. VARDON

Date: 21/7/97

**VAN LEER AUSTRALIA PTY LIMITED—PERTH
ENTERPRISE BARGAINING AGREEMENT 1997.
No. AG 163 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch
and

Van Leer Australia Pty Ltd

No. AG 163 of 1997.

Van Leer Australia Pty Limited—Perth Enterprise
Bargaining Agreement 1997.

19 August 1997.

Order.

HAVING heard Mr G.C. Sturman as agent for the Applicant
and Ms C.D. Natta as agent for the Respondent, and by consent,
the Commission, pursuant to the powers conferred on it
under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties in the
terms of the following schedule and lodged in the Commission
on the 23rd day of July, 1997 entitled Van Leer Australia Pty
Limited—Perth Enterprise Bargaining Agreement 1997 be registered
as an industrial agreement and replaces the Van Leer Australia
Pty Ltd (W.A.) (Enterprise Bargaining) Consent Agreement No. AG
8 of 1992.

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Enterprise Agreement shall be known as the *Van Leer
Australia Pty Limited—Perth Enterprise Bargaining Agreement
1997.*

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Date and Period of Operation
4. Scope and Parties to the Agreement
5. Relationship to Parent Awards
6. Consultative Process
7. Methods to Achieve Business Objectives
8. Wages
9. Journey Cover
10. Redundancy Agreement
11. Right of Entry
12. Trade Union Training
13. Dispute Resolution Procedure
14. Signatures of the Parties

3.—DATE AND PERIOD OF OPERATION

This agreement shall operate from 14th May, 1997 and shall
expire on the 14th November 1998. Parties to the agreement
shall commence negotiation three months prior to expiry of
this agreement.

4.—SCOPE AND PARTIES TO THE AGREEMENT

(1) This agreement shall apply to and be binding on **Van
Leer Australia Pty Limited** (“the company”) and all the
employees engaged under the terms of the Metal Trades
(General) Award 1965 in or in connection with the company’s
industrial container and rigid plastics division, Perth operations
at 8 Rawlinson Street, O’Connor. Upon registration the terms
of this Agreement shall be binding upon an estimated 20
employees.

(2) This Agreement shall also be binding upon the Automotive,
Food, Metals, Engineering, Printing & Kindred Industries
Union of Workers, WA Branch (“the union”).

5.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read in conjunction with the
Metal Trades (General) Award 1965.

(2) Where there is any inconsistency between this Agreement
and the Award, this Agreement shall prevail to the extent
of any inconsistency.

6.—CONSULTATIVE PROCESS

The Consultative Works Committee (CWC), representing
employees across the range of vocational disciplines and
departments shall monitor this Agreement through its duration.

The CWC is to be maintained as the principal forum for
discussions affecting employees within the business, other than
Industrial Relations matters which are to be dealt with through
the Disputes Procedure.

The CWC shall participate in the development and
implementation of improvement plans and measures to increase
flexibility and efficiency, and to develop and agree to suitable
Key Performance Indicators (KPI’s) for the organisation prior
to expiry of this Agreement.

Improvements in the agreed indicators will form part of the
next site Agreement.

Progress on the achievement of agreed objectives shall be
communicated monthly through face-to-face meetings and
postings on company notice boards.

7.—METHODS TO ACHIEVE BUSINESS
OBJECTIVES

The principal objective of this business is to increase
competitiveness in a market which has become more difficult
in recent years due to the effects of globalization, stiffer local
competition and rising costs. Our challenge is to reduce the
total cost of our finished product by 30%.

In order to achieve this objective the following terms and
conditions have been agreed.

(1) **Competency Based Training and Classification
Structure**

To be developed by the Consultative Committee to meet
future business needs.

The parties will establish a competency based training and
classification structure. This task is to be completed by the
end of 1997.

Recipients will continue to receive their existing service
allowance, but no additional service allowances are payable after
the establishment of the training and classification structure.

(2) **Early Start**

In order to ensure the production lines are able to run for as
long as possible during normal working hours, two people (at
least one being a Leading Hand or Setter) plus Maintenance
Fitter will commence work 30 minutes early each day in order
to—

- set up each line;
- perform necessary quality checks;
- ensure availability of materials;
- perform preventative maintenance tasks;
- perform safety checks;

(3) **Other**

Other improvements to work practices and conditions as
identified and agreed by the Consultative Work Committee.

8.—WAGES

(1) Wages will be increased as follows:—

- (i) 4.5% increase to be continued from the 1992 Enterprise Agreement;
- (ii) 6.0% increase to be continued from the 1993 Enterprise Agreement;
- (iii) 9% increase to be continued from the 1995 Enterprise Agreement.
- (iv) An increase of 4% payable from the beginning of the first pay period to commence on or after 14th May, 1997.

An additional 3% increase payable from the beginning of the first full pay period to commence on or after 14th May, 1998.

9.—JOURNEY COVER

Journey, accident insurance will be as follows:—

Coverage: Personal Accident insurance while the employee is travelling to or from places of employment and suffers an injury or death as a result of an accident in circumstances where the relevant Worker's Compensation Act does not provide benefits.

Benefits: Accidental death \$100,000.00
 Accidental weekly benefits 100% of wage up to a maximum of \$1,000.00 per week.

10.—REDUNDANCY AGREEMENT

1. **Notice of Termination**

As per the Metal Trades (General) Award 1965, as follows:—

Period of Continuous Service	Period of Notice
less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

Employees over 45 years of age at the time of the notice, with not less than two years continuous service, shall be entitled to an additional week's notice.

2. **Severance Pay**

- (i) Three weeks pay per year of completed service up to a maximum of 52 weeks. Employees who have completed more than 20 years continuous service will also receive one weeks pay per completed year of service in excess of 20 years, in addition to the 52 week maximum amount.
- (ii) An ex-gratia payment of \$2,000 for an employee with continuous service of 17 years and four months or more.
- (iii) Accrued annual leave, plus loading of 17.5%
- (iv) Pro-rata long service leave after 5 years service.
- (v) Accumulated sick leave to be paid out.

(3) **Redundancy Selection**

The overriding factor in determining candidates for redundancy shall be the retention of the skills and expertise required to operate the business effectively.

In the first instance, volunteers for redundancy will be called for in those departments and classifications as determined by the company.

Should there be insufficient volunteers, the company may select other employees for redundancy. Given the changing needs of the market, and the necessity to retain skills, the company may elect to apply selection criteria to be agreed to at the time. In such a case, the parties will consult.

This redundancy provision will operate for the life of this Enterprise Agreement, and is not to be used as a precedent.

11.—RIGHT OF ENTRY

Official representatives of the employees' union are allowed entry to the Perth operations to consult with members and delegates under the following conditions:—

Reasonable prior notification of intention to come on site is to be given to the Factory Manager or authorised representative.

As it is a regulation for all visitors, officials must first report to reception, sign the visitors log and obtain a visitor's badge before proceeding.

Officials must at all times be accompanied by an employee of Van Leer whilst on-site.

12.—TRADE UNION TRAINING

It is agreed that a maximum of 10 days per annum paid training leave will be allowed for a delegate to be trained by the union in industrial relations matters. This is to be by prior arrangement with site management. The same notice period is required as for annual leave.

13.—DISPUTE RESOLUTION PROCEDURE

The following procedure is to be followed by the parties in connection with questions, disputes or difficulties arising under this Agreement:—

- (1) The matter shall first be discussed by the employee or Shop Steward with his/her Foreman or Supervisor.
- (2) If not settled, the matter shall be discussed between the accredited union representative and nominated officer of the employer.
- (3) If not settled, the dispute shall be documented and discussed further between the appropriate union official and employer representative.
- (4) If the matter is still not settled it shall be submitted to the Western Australian Industrial Relations Commission.
- (5) Throughout any dispute resolution procedures, work shall continue normally, on the understanding that there is to be no other action, including strikes, work bans or any other variations to work practices.
- (6) Reasonable time shall be given to each of stages (1) to (4) to be finalised.

14.—SIGNATURES OF THE PARTIES

FOR and on behalf of
Van Leer Australia Pty Limited

<u>S.D. Sproull (signed)</u>	<u>Factory Manager</u>	Date: <u>17/7/1997</u>
Signature	Title (print)	
_____	_____	Date: <u>__/__/19__</u>
Signature	Title (print)	

THE COMMON SEAL of)
 Automotive, Food, Metals, Engineering, Printing &)
 Kindred Industries Union of Workers, WA Branch)
 was hereunto affixed in the presence of:)

<u>J. Sharp-Collett (signed)</u>	<u>State Secretary</u>	Date: <u>21/7/1997</u>
Signature	Title (print)	
<u>G. Sturman (signed)</u>	<u>Research Officer</u>	Date: <u>21/7/1997</u>
Signature	Title (print)	

**WEST AUSTRALIAN NEWSPAPERS (PRINTING)
 AWARD 1997.
 No. A1 of 1997.**

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

West Australian Newspapers Limited
 and

The Automotive, Food, Metals, Engineering, Printing and
 Kindred Industries Union of Workers, Western Australian
 Branch.

No. A 1 of 1997.

COMMISSIONER R.N. GEORGE.

28 August 1997.

Order:

WHEREAS at a conference convened before the Commission the parties confirmed that existing priorities and issues still to be resolved concerning the above Application had caused the above matter to be placed on hold for a period described as "indefinite"; and

WHEREAS in the circumstances the Applicant was granted leave to discontinue the Application without prejudice to any subsequent Application in relation to the same matter.

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders—

THAT the Application be and is hereby discontinued.

(Sgd.) R. N. GEORGE,

[L.S.]

Commissioner.

**WEST AUSTRALIAN NEWSPAPERS PRODUCTION
EMPLOYEES (ENTERPRISE BARGAINING)
AGREEMENT 1997.
No. AG 122 of 1997.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

West Australian Newspapers Limited
and

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union or Workers—Western Australian
Branch and Others.
No. AG 122 of 1997.

West Australian Newspapers Production Employees
(Enterprise Bargaining) Agreement 1997.

COMMISSIONER R.N. GEORGE.

1 September 1997.

Order.

HAVING heard Mr R. Joyce on behalf of the Applicant and Mr G. Bucknall for The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union or Workers—Western Australian Branch; Ms J. Harrison for The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and The Construction, Mining, Energy, Timbryards, Sawmills and Woodworkers Union of Australia, Western Australian Branch and Mr J. Fiala for The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 1997 in the terms of the following schedule be registered with effect on and from 1 April 1997.

(Sgd.) R. N. GEORGE,

[L.S.]

Commissioner.

Schedule.

1.—TITLE

This Agreement shall be referred to as the West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 1997.

2.—ARRANGEMENT

- 1 Title
- 2 Arrangement
- 3 Application of agreement
- 4 Parties bound
- 5 Date and operation
- 6 Number of employees bound
- 7 Single bargaining unit
- 8 Avoidance of industrial disputes
- 9 National standards
- 10 Relationship to parent awards and previous enterprise bargaining agreements
- 11 Agreed aim of this agreement
- 12 Wage increases
- 13 Night shift loading

- 14 Annual leave
 - 15 Pro rata long service leave
 - 16 Service pay increases
 - 17 Responsibility payment increases
 - 18 Electrical licence allowance increases
 - 19 All other allowances
- Schedule "A" Wages

3.—APPLICATION OF AGREEMENT

This Agreement shall apply at the establishments of West Australian Newspapers Limited in respect of all employees who are engaged in any of the occupations, industries or callings specified in the Printing (Newspaper) Award 1979, or the Electrical, Engineering and Building Trades (West Australian Newspapers) Award 1988.

4.—PARTIES BOUND

- West Australian Newspapers Limited,
219 St. George's Terrace
PERTH WA 6000
- The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers,
Western Australian Branch
1111 Hay Street
WEST PERTH WA 6001
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia
- Engineering & Electrical Division—WA Branch
401-403 Oxford Street
MT. HAWTHORN WA 6016
- The Construction, Mining, Energy, Timbryards, Sawmills and Woodworkers Union of Australia—
West Australian Branch
102 Beaufort Street
PERTH WA 6000
The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers
27 Moore Street
EAST PERTH WA 6004

5.—DATE AND OPERATION

This Agreement shall operate from the beginning of the first pay period commencing on or after 1 April 1997 and shall remain in force for a period of three years until 31 March 2000. Discussions between the company and the employees will commence not later than three (3) months before the expiry date of this Agreement.

This Agreement shall not be cancelled or varied unless agreed to by the parties.

6.—NUMBER OF EMPLOYEES BOUND

Approximately 380 employees are bound by this Agreement.

7.—SINGLE BARGAINING UNIT

A single bargaining unit has been created in accordance with the State Wage Case Principles. This unit, on behalf of their members, negotiated this Agreement with the company.

8.—AVOIDANCE OF INDUSTRIAL DISPUTES

The parties to this Agreement are committed to observing the relevant award's dispute settlement procedures in respect to any questions, difficulties or disputes arising under this Agreement.

9.—NATIONAL STANDARDS

This Agreement shall not operate so as to cause any employee to suffer a reduction in ordinary time earnings, or in Commission recognised national standards such as standard hours of work, annual leave or long service leave.

10.—RELATIONSHIP TO PARENT AWARDS AND
PREVIOUS ENTERPRISE BARGAINING
AGREEMENTS

This Agreement shall be read and interpreted wholly in conjunction with the Printing (Newspaper) Award, and the Electrical Engineering and Building Trades (West Australian Newspapers) Award, whichever is the relevant award. Where there is any inconsistency between this Agreement and the

said parent award(s), this Agreement shall prevail to the extent of any inconsistency.

This is the third agreement negotiated between the company and the Single Bargaining Unit on behalf of their members. Both the company and our employees have shared mutual benefits arising from the two previous agreements—West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 1993—AG44 of 1993, and West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 1995—AG259 of 1995. To ensure the parties still share the benefits from these previous agreements it has been agreed to again incorporate the provisions of Attachment 1, from AG44 of 1993 into this Agreement.

11.—AIM OF THIS AGREEMENT

The aim of this Agreement is to continue to consolidate the shared benefits that the parties have gained from the two previous enterprise bargains. For this reason the wage increases provided for under this Agreement are provided on the basis that the parties are prepared to continue to make real and demonstrable changes in both attitudes and the way in which work is performed to facilitate further improvements in productivity and efficiency. These changes will enable the company to achieve a fuller and more productive utilisation of its resources in the future.

The parties reaffirm their commitment to the measures detailed in Attachment 1 of AG44 of 1993 and the process of workplace change and improvement through the process detailed in the ORGANISATIONAL AND WORKPLACE IMPROVEMENT (IMPLEMENTATION—JANUARY 1993) flow chart.

The parties will continue to address opportunities to become more competitive and to respond quickly and efficiently to challenges as they occur. The successful introduction of the Motoring Guide is a good example of “responding to challenges quickly and efficiently as they occur”. In negotiations to make “Motors” a reality the parties were able to change a number of practices, including rosters, which showed that there is always room for flexibility when it comes to efficiency and change.

There is a clear recognition by all parties that for this company to remain competitive it must be able to respond quickly and positively to the demands of the market and the requirements of its customers. The successful negotiation of the Composing Room—Redundancy and Training Agreement—AG40 of 1996, is a good example of responding “quickly and positively to the demands of the market and the requirements of its customers”.

The parties will seek to finalise the issues associated with career paths and associated training.

The parties will commence to negotiate issues associated with achieving a company specific state award for all of our production employees. The parties will endeavour to reach agreement on these issues. However, in the event that the parties are unable to reach agreement on these issues, the parties have agreed to refer the outstanding issues to the West Australian Industrial Relations Commission.

12.—WAGE INCREASES

In recognition of this Agreement and the potential to further increase productivity and efficiency the parties have agreed to the following increases in wages—

- 4% from first pay period on or after 1 April 1997,
- 4% from first pay period on or after 1 April 1998 and
- 4% from first pay period on or after 1 April 1999.

The wage rates are contained in Schedule A.

These increases shall not be absorbed into any overaward payments.

13.—NIGHT SHIFT LOADING

Under AG44 of 1993 at clause 9 (ix), the company and the then Printing and Kindred Industries Union previously agreed to increase the night shift penalty rate paid to employees employed under the Printing (Newspaper) Award. The parties agreed to increase the night shift penalty rate from 17.5% of the Hand Compositor’s ordinary wage to 17.5% of the Compositor Grade 2 wage.

Under this Agreement the company and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, have agreed to increase the night shift penalty rate paid to employees employed under the Printing (Newspaper) Award. The parties have agreed to alter the night shift penalty rate from 17.5% of the Compositor Grade 2 ordinary wage, to 17.5% of the Composing Level 1 ordinary wage.

The company increased the night shift penalty on the condition that the Single Bargaining Unit, and its members, accept and agree that the issue of night shift penalties has now been resolved.

14.—ANNUAL LEAVE

An employee will be able to take annual leave each year on more than two occasions subject to the following requirements—

- The employee’s “swap” will need to be approved by his/her manager,
- The leave must be taken within their annual leave roster period, and
- Each period of leave must be for at least one week.

15.—PRO RATA LONG SERVICE LEAVE

An employee, after completing ten continuous years of service, will be able to request to take 8.6 weeks pro rata long service. Each period of long service leave must be for at least one week. The company will consider each request to ensure that granting leave at that time will not adversely affect production. The company will not unreasonably deny any employee’s request for leave.

All other provisions of the West Australian Long Service Leave Order 1958 will apply.

16.—SERVICE PAY INCREASES

Service pay will be increased as follows—

- After 14 years and up to 19 years continuous service—\$3.00 per week ie \$156 per year. After 20 years continuous service—\$6.00 per week ie \$312 per year.

Subject to fulfilling the qualification provisions of the 1976 Service Pay Agreement, service pay will be extended to all employees covered by this Agreement.

17.—RESPONSIBILITY PAYMENT INCREASES

The Responsibility Payment of the Electrical, Engineering & Building Trades (West Australian Newspapers) Award—Schedule 1(3) will be increased as follows—

- (3)(a) \$7.10 and (3)(b) \$13.80 from the first pay period on or after 1 April 1997;
- (3)(a) \$7.40 and (3)(b) \$14.40 from the first pay period on or after 1 April 1998; and (3)(a) \$7.70 and (3)(b) \$15.00 from the first pay period on or after 1 April 1999.

18.—ELECTRICAL LICENCE ALLOWANCE INCREASES

The Electrical Licence Allowance of the Electrical, Engineering & Building Trades (West Australian Newspapers) Award—Schedule 1(5) will be increased as follows—

- \$15.70 from the first pay period on or after 1 April 1997;
- \$16.30 from the first pay period on or after 1 April 1998; and
- \$17.00 from the first pay period on or after 1 April 1999.

19.—ALL OTHER ALLOWANCES

All other allowances in the Printing (Newspaper) Award, and the Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, will be reviewed on 1 July each year in accordance with the current State Wage Case Principles.

On behalf of West Australian Newspapers Limited

date

On behalf of The Automotive, Food, Metals and Engineering, Printing and Kindred Industries Union (West Australian Region)

date

On behalf of The Communications, Electrical,
Electronic, Energy, Information, Postal, Plumbing
And Allied Workers' Union of Australia, Engineering
& Electrical Division (West Australian Branch)

date

On behalf of The Construction, Mining, Energy,
Timberyards, Sawmills and Woodworkers Union

date

On behalf of The Western Australian Builders'
Labourers, Painters & Plasterers Union of Workers

date

SCHEDULE A—WAGES

Classification	Current Rate	First 4% 1-4-97	Second 4% 1-4-98	Third 4% 1-4-99	Total Increase
Press Room					
Printing Machinist	730.70	759.90	790.30	821.90	91.20
Assistant Machinist	604.90	629.10	654.30	680.50	75.60
General Hand	563.50	586.00	609.40	633.80	70.30
Publishing					
Publishing Hand—Grade 1	594.10	617.90	642.60	668.30	74.20
Publishing Hand—Grade 2	465.20	483.80	503.20	523.30	58.10
Pre Press					
Graphic Reproducer	730.10	759.30	789.70	821.30	91.20
Composing					
All G2's & Readers— interim rate	687.97	715.50	744.10	773.90	85.93
Level 1—all G1's new rate	731.64	760.90	791.30	823.00	91.36
Level 2—new rate	753.48	783.60	814.90	847.50	94.02
Systems Mechanic	664.40	691.00	718.60	747.30	82.90
Electrical					
Electronic Technician— less than 2 yrs	758.10	788.40	819.90	852.70	94.60
Electronic Technician— more than 2 yrs	781.20	812.40	844.90	878.70	97.50
Electrician Special Class	732.50	761.80	792.30	824.00	91.50
Trades Assistant	585.80	609.20	633.60	658.90	73.10
Engineering					
Engineering Tradesperson— Special Class	732.50	761.80	792.30	824.00	91.50
Trades Assistant	585.80	609.20	633.60	658.90	73.10
Building Trades					
Building Tradesperson— Special Class (Carpenters and Painters)	721.50	750.40	780.40	811.60	90.10
Automotive Mechanics					
Motor Mechanics	600.40	624.40	649.40	675.40	75.00
Electrical Allowances					
Responsibility Shift Allowance					
Saturday	6.83	7.10	7.40	7.70	0.87
Sunday	13.30	13.80	14.40	15.00	1.70
Electrical Licence Allowance	15.10	15.70	16.30	17.00	1.90

PUBLIC SERVICE ARBITRATOR— Awards/Agreements— Variation of—

HOSPITAL SALARIED OFFICERS' AWARD 1968.
No. 39 of 1968.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)

and

The Minister for Health and Others.

No. P 59 of 1994.

COMMISSIONER R.N. GEORGE.

22 August 1997.

Order.

WHEREAS the Applicant sought and was granted leave to
discontinue the Application, the Commission, pursuant to the
powers conferred on it under the Industrial Relations Act, 1979,
hereby orders—

THAT the Application be and is hereby discontinued.

(Sgd.) R. N. GEORGE,

[L.S.]

Commissioner.

METROPOLITAN TEACHING HOSPITALS— SALARIES AND CONDITIONS OF SERVICE AWARD 1986 (MEDICAL OFFICERS).

No. PSA A18 of 1986.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hon Minister for Health and Others

and

The Western Australian Branch of The Australian Medical
Association Incorporated.

No. P 3 of 1994.

Metropolitan Teaching Hospitals—Salaries and Conditions
of Service Award 1986 (Medical Officers)

No. PSA A18 of 1986.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

2 September 1997.

Order.

HAVING heard Mr M. Fitzpatrick on behalf of the Applicants
and Mr P. Jennings on behalf of the Respondent and by con-
sent, the Commission, pursuant to the powers conferred on it
under the Industrial Relations Act, 1979, hereby orders—

THAT the Metropolitan Teaching Hospitals—Salaries
and Conditions of Service Award 1986 (Medical Offi-
cers) be varied in accordance with the following Schedule
and that such variation shall have effect from the begin-
ning of the first pay period commencing on and from 25
August 1997.

(Sgd.) R.N. GEORGE,

[L.S.]

Commissioner.

Schedule.

Clause 18A.—Public Holidays: Delete subclause (1)(b) and insert in lieu the following—

- (b) Two additional days of paid leave per calendar year which may be taken at a time mutually agreed between the employer and employee provided that—
- (i) these days are not cumulative and may only be taken in the year in which they fall due;
 - (ii) not more than one day may be taken before Easter Monday;
 - (iii) the employer and employees may agree alternative arrangements for the taking of these days or payment in lieu thereof.

PUBLIC SERVICE AWARD 1992.
No. PSA A4 OF 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of
Western Australia (Incorporated)

and

Commissioner, Aboriginal Affairs
and Others.

No. P 35 of 1997.

Public Service Award 1992.

COMMISSIONER J.F. GREGOR.

2 September 1997.

Order.

HAVING heard Ms F. Bajrovic on behalf of the first named party and Ms K. Le Merle on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Public Service Award 1992, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 2 September 1997.

[L.S.] (Sgd.) J. F. GREGOR,
Commissioner.

Schedule.

SCHEDULE L—NAMED PARTIES

1. Insert the following to this schedule—

Chief Executive Officer, Rottneest Island Board
Bush Fires Board
Western Australian Meat Industry Authority
Chief Executive Officer, Ministry for Culture and the Arts
Chief Executive Officer, Curriculum Council
Chief Executive Officer, TAFE International WA
Chief Executive Officer, Department of Education Services of Western Australia

2. Delete the following from this schedule

Executive Director, Department of the Arts

**WESTERN AUSTRALIAN STATE
PUBLIC HOSPITALS, MEDICAL
PRACTITIONERS' AWARD 1987**
No. PSA A19 of 1986.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Minister for Health and Boards of Management of Teaching
and Non-Teaching Hospitals
and

The Western Australian Branch of The Australian Medical
Association Incorporated.

No. P 2 of 1994.

Western Australian State Public Hospitals, Medical
Practitioners' Award 1987
No. PSA A19 of 1986.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

2 September 1997.

Order.

HAVING heard Mr M. Fitzpatrick on behalf of the Applicants and Mr P. Jennings on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Western Australian State Public Hospitals, Medical Practitioners' Award 1987 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on and from 25 August 1997.

[L.S.] (Sgd.) R.N. GEORGE,
Commissioner.

Schedule.

Clause 9.—Public Holidays: Delete subclause (1)(b) and insert in lieu the following—

- (b) Two additional days of paid leave per calendar year which may be taken at a time mutually agreed between the employer and employee provided that—
- (i) these days are not cumulative and may only be taken in the year in which they fall due;
 - (ii) not more than one day may be taken before Easter Monday;
 - (iii) the employer and employees may agree alternative arrangements for the taking of these days or payment in lieu thereof.

AWARDS/AGREEMENTS— Variation of—

BUILDING TRADES (GOVERNMENT) AWARD 1968 No. 31A of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hon Minister for Works and Others

and

The Construction, Mining, Energy, Timberyards, Sawmills
and Woodworkers Union of Australia—Western Australian
Branch and Others.

No. 1062 of 1997.

Building Trades (Government) Award 1968
No. 31A of 1966.

COMMISSIONER P.E. SCOTT .

5 September 1997.

Order.

HAVING heard Mr S Majeks on behalf of the Applicants and Ms J Harrison on behalf of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Building Trades (Government) Award 1968
(No. 31A of 1966) be varied in accordance with the fol-
lowing Schedule and that such variation shall have effect
on and from the 4th day of August 1997.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

Schedule.

1. Schedule A.—List of Respondents: Delete this schedule and insert the following in lieu thereof—

Contract and Management Services
Health Department of WA
Agriculture WA
Rottnest Island Board
Royal Perth Hospital
Princess Margaret Hospital
Queen Elizabeth II Medical Centre
Fremantle Hospital
King Edward Memorial Hospital
Department of Transport
Commissioner Main Roads
Zoological Gardens Board

CARGILL AUSTRALIA LIMITED—SALT PRODUCTION AND PROCESSING AWARD 1988 No. A 34 of 1988.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cargill Australia Ltd

and

The Australian Workers' Union, West Australian Branch,
Industrial Union of Workers and Others.

No. 1337 of 1997.

Cargill Australia Limited—Salt Production and
Processing Award 1988
No. A 34 of 1988.

28 August 1997.

Order.

HAVING heard Ms T. Allen on behalf of the Applicant and Mr D. Bartlem on behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Mr G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr G. McCulloch on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Cargill Australia Limited—Salt Production
and Processing Award 1988 be varied in accordance with
the following Schedule and that such variation shall have
effect from the beginning of the first pay period com-
mencing on or after the 14th day of August, 1997.

(Sgd.) A.R. BEECH,

[L.S.]

Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete this clause and insert in lieu thereof the following—

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
3. State Wage Principles—June 1991
4. Definitions
5. Area and Scope
6. Term
7. Contract of Service
8. Temporary Employees
9. Mixed Functions
10. Hours
11. Overtime
12. Shift Work
13. Essential Services
14. Cyclone Shutdown
15. Holidays
16. Special Leave
17. Annual Leave
18. Long Service Leave
19. Sick Leave
20. Workers' Compensation
21. Leave for Union Training
22. Training and Promotion
23. Wages
24. District and Site Allowances
25. Service Payments
26. Special Rates and Provisions
27. Time and Wages Record
28. Payment of Wages
29. Posting of Notices
30. Union Officials

31. Industrial Relations Procedure
 32. Board of Reference
 33. Travelling to and from Work
 34. Redundancy
 35. Utilisation of Contractors
 36. Apprentices
 Appendix—Resolution of Disputes Requirements
 Schedule 1—Application of 38-Hour Week
 Schedule 2—Accommodation Policy
 Schedule 3—Wages and Classification Structure
 Schedule 4—Parties to the Award
 Schedule 5—Cargill Salt—Training Committee Constitution
 Appendix—S.49B—Inspection Of Records Requirements
2. Clause 4.—Definitions—
- (A) Delete subclause (10) of this clause and insert in lieu thereof the following—
- (10) E5 Electrical Tradesperson (100%)—Shall mean a qualified Electrical Tradesperson who has been appointed as such by the Company, who is competent in all facets of the particular trade syllabus and who is the holder of a current appropriate electrical licence issued by the Office of Energy.
- (B) Delete subclause (11) of this clause and insert in lieu thereof the following—
- (11) E6 Electrical Tradesperson (105%)—Shall mean a qualified Electrical Tradesperson who has been appointed as such by the Company, who is competent in all facets of the particular trade syllabus and who is the holder of a current appropriate electrical licence issued by the Office of Energy and in addition—
- (a) Has been employed as an Electrical Tradesperson and has 12 months appropriate post-trade experience; and
- (b) Who is required to possess and apply to his/her work a level of trade competence in excess of that required of the base electrical tradesperson, and may include a level of competence in industrial electronics and complex circuitry which is higher than that reasonably expected of the base tradesperson. Shall carry out tasks, within boundaries, of expanded peripheral and incidental to trade training; and
- (i) passed 40 hours of appropriate, agreed credited TAFE training, and
- (ii) through practical experience or otherwise achieve a knowledge in cross skilling to the equivalent of 40 hours of in-house training as established and assessed by the Training Committee.
- (C) Renumber subclause (14) of this clause as subclause (16) and insert a new subclause (14) as follows—
- (14) E9 Electrical Tradesperson (120%)
 The employee shall in addition to level of competency of an Electrical Tradesperson E8
- (a) Successfully complete an additional nominal 100 hours of post trade training in accredited, agreed TAFE courses; or
- (b) 100 hours vendor/in-house training as agreed;
- (c) or a combination of (a) and (b);
- (d) Shall be responsible and accountable for the planning, organisation, administration and executions of all work to this level of the employee's skill, competence and training.
- (D) Insert a new subclause (15) as follows—
- (15) E10 Electrical Tradesperson (125%)
 The employee shall in addition to level of competence of and Electrical Tradesperson E9.
- (a) Successfully complete an additional nominal 100 hours of post trade training in accredited, agreed TAFE courses; or
- (b) 100 hours vendor/in-house training as agreed;
- (c) or a combination of (a) and (b);
- (d) Shall be responsible and accountable for the planning, organisation and execution of all work to this level of the employee's skill, competence and training.
3. Clause 11.—Overtime—
- (A) Delete paragraph (3)(c) of this clause and insert in lieu thereof the following—
- (c) Payment for weekend shiploading shifts.
- (i) When rostered for a 12-hour shiploading shift at weekends, and operations which may include letting the ship go are completed before the end of the shift, employees will be paid for a minimum of 8 hours worked, or for actual hours if in excess of 8.
- (ii) Payment for a crew brought in only to let the ship go will be as for a call out, as per current practice.
- (B) Delete paragraph (3)(d) of this clause and insert in lieu thereof the following—
- (d) Cancellation of Sunday shiploading shifts.
- (i) In the event of unforeseen circumstances necessitating the cancellation of Sunday day shift, it was agreed 12 hours prior notification would be given. Sunday night shift would require 6 hours notification of cancellation.
 Failure to inform employees rostered for shiploading of the shift cancellation by the specified time will entitle each rostered crew member not informed to a payment of 4 hours double time.
- (ii) On unscheduled shifts port haul finishes when the ship is finished.
- (C) Insert a new paragraph (3)(e) as follows—
- (e) If there is no salt ship to follow on the next shift—
- (i) On schedule weekly day shifts port haul finishes at 1800 hours—the starting time of the other shift crew.
- (ii) On scheduled Saturday day shift port haul finishes at 1430 hours or when ship is finished, whichever is later.
- (iii) On scheduled night shifts port haul finishes at 0100 hours or when ship is finished, whichever is later.
- (iv) On unscheduled shifts, port haul finishes when ship is finished.
- (v) On scheduled shifts being in lieu of A.D.O. deferred in accordance with schedule 38 hour week shiploading crew.
 Day Shift—Port Haul finishes at 1530 or when ship is finished, whichever is later.
 Night Shift—Port Haul finishes at 0100 or when ship is finished, whichever is later.
- (D) Insert a new paragraph (3)(f) as follows—
- (f) If there is a condition of unacceptably high or low salt stocks at the port, relative to

scheduled shipment, interim arrangements for reduced or increased port haul will be made in consultation with site union representatives. This would normally be determined a week ahead.

When one week or more annual leave is taken, normally including the normal work days Monday-Friday, the employees may work on the Saturday preceding the leave period if it is a scheduled Saturday or if required for shiploading. The employee would not work the Sunday preceding the leave period or the Saturday or Sunday at the end of the leave period.

4. Clause 15.—Holidays: Delete subclause (1) of this clause and insert in lieu thereof the following—

- (1) The following days or the days observed in lieu thereof shall be allowed as holidays without loss of pay—namely: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Port Hedland Cup Day, Christmas Day and Boxing Day; provided that another day may be taken as a holiday by arrangement between the parties, in lieu of any of the days named in this subclause.

5. Clause 19.—Sick Leave: Delete subclauses (1) and (2) of this clause and insert in lieu thereof the following—

- (1) Subject as hereinafter provided, an employee shall be entitled to payment for non-attendance on the grounds of personal ill-health or injury for not more than 10 days during each year of continuous service. Payment hereunder may be adjusted at the end of each calendar year or at the time the employee leaves the service of the employer in the event of the employee being entitled by service subsequent to the sickness to a greater allowance than that made at the time the sickness occurred. This clause shall not apply where the employee is entitled to compensation under the Workers' Compensation and Assistance Act.

- (2) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require, provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

Upon termination, 25% of all accrued sick leave will be paid out.

6. Clause 22.—Training and Promotion: Delete subclause (6) of this clause and insert in lieu thereof the following—

- (6) Electrical Tradespersons will be given the opportunity to train for up to 4 hours/week/person without loss of normal earnings for attending agreed TAFE training courses applicable to Cargill Salt operations so they may qualify for E6, E7, E8, E9 and E10 Electrical Tradesperson levels.

The number of people absent from the workplace at any time to be negotiated with the consultative committee, if necessary, to maintain continuity of operations.

All training to be determined subject to Department requirements in consultation with Training and Consultative Committees.

Accreditation may be obtained by passing the required TAFE requirements without attending the training course.

For reclassification, the Electrical Tradesperson must have satisfied the work definitions, been assessed as having completed an appropriate training which may include competency testing. This criteria applies

where formal training courses have been established as the appropriate standard for career progression.

7. Clause 34.—Redundancy: Delete paragraph (2)(c) of this clause and insert in lieu thereof the following—

- (c) Dismissals shall be in accordance with the principle of "first on, last off";
- (i) Regardless of actual notice given, a payment of 13 weeks in lieu of notice will be made at the basic weekly rate.
- (ii) Severance payment of eight weeks pay plus two weeks pay for each year of service pro-rata for completed months of service will be made at the basic weekly rate.
- (iii) All annual and long service leave accrued but not taken will be paid out based on the Award.
- (iv) Relocation assistance includes paid airfares for the employee and dependents (in the form of airline tickets) to Perth or favoured destination given that Port Hedland to Perth costs would be the maximum paid under this clause. An allowance of up to 30 cubic metres of cartage space to Perth or favoured destination, including insurance, for personal belongings and a vehicle, given that Port Hedland to Perth costs would be the maximum costs paid under this clause. Relocation costs will not be paid in cash and will not be considered if a new employer accepts responsibility for transportation etc. NB: The basic weekly rate includes the Award rate as per the employee's classification, service pay and district and site allowances.
- (v) Retraining of employees to retain employment with the Company shall be discussed when circumstances of any redundancy of an employee or employees is pending or occurs.
- (vi) Tenancy of Company accommodation to be discussed when the circumstances of any redundancy of an employee or employees is pending or occurs.

8. Clause 35.—Utilisation of Contractors: Delete this clause and insert in lieu thereof the following—

35.—UTILISATION OF CONTRACTORS

(1) Contractors will generally be employed for major construction, modification and project work. Normal routine work is best done by the employees of the Company having an intimate knowledge of the operation and its requirements. Contractors may, however, be necessary from time to time to perform some such work in order to meet surges in requirements which arise from peculiar or special circumstances.

(2) (a) The employer will not retain the services of any Contractor to perform the work which would otherwise be performed by employees covered by this Award. Prior to the commencement the appropriate Unions will be notified of the work required to be performed and the nominated Contractor, except in special circumstances.

(b) No employee employed by the Company shall suffer any detrimental effect in respect of his/her normal earnings, job security or available reasonable hours of work by reason of the employment of Contractors' employees in such circumstances.

(c) There will be no retrenchment of Company employees because of the employment of Contractors.

(d) The provisions of this subclause shall not act in any manner prejudicial to the employer's operation in the event of an emergency circumstance arising.

(3) Union representatives credentialled to the employer by a Union party to this Award, may not absent themselves from duty for purposes of attending matters on behalf of a Contractor's employee but a Union representative shall not be prejudiced by so doing in off-duty hours with the approval of his/her Union and the approval of the Contractor to enter his/her premises.

9. Schedule 3—Wages and Classification Structure: Delete this schedule and insert in lieu thereof the following—

SCHEDULE 3
WAGES AND CLASSIFICATION STRUCTURE

Level 1 90% \$533.43#	Level 2 92.5% \$547.64#	Level 3 95% \$562.91#	Level 4 97.5% \$577.71#	Level 5 100% \$592.56#	Level 6 105% \$622.16#	Level 7 110% \$651.81#	Level 8 115% \$681.46#	Level 9 120% \$711.16#	Level 10 125% \$740.76#
SECTION A									
AMWU & CEPU	Storeman Serviceman T/A appointed as such to relieve on stores or serviceman duties.	Skilled Serviceman (expansion of duties)		Boilermaker Welder	E6 Electrical tradesperson (as defined) Refrig/fitter Basic Auto fitting experience. Fitter with auto electrician experience. Fitter minor welding. Fitter/mechanic with hydraulic experience. BMW with minor fitting experience. Through practical experience or otherwise, achieved a level of knowledge in cross skilling to the equivalent of 80 hours in-house training as established by the Joint Training Committee. All above levels within boundaries of expanded incidental and peripheral definition.	As defined AMWU & TAFE courses	As defined AMWU & TAFE courses	AMWU classification yet to be agreed	AMWU classification yet to be agreed
Trades Assistant	T/A who is required to use some power tools eg power saw, radial drill, pedestal drill	Skilled Storeman (additional duties)		Fitters Mechanics Refrig/fitter E5 Electrical Tradesperson					
Adult Apprentice		Adult Apprentice (final year)				Post trade or cross trade 100 hours	Cross trade or post trade 100 hours		
						E7 Electrical Tradesperson	E8 Electrical Tradesperson	E9 Electrical Tradesperson	E10 Electrical Tradesperson
SECTION B									
AWU									
Process Worker 1 (as defined)	Process Worker 2 (as defined)	Process Worker 3 (as defined)	Process Worker 4 (as defined)	Plant Operator 3 (as defined)	Plant Operator 4 (as defined)	Classification yet to be granted.			
	A4 Operator	Shiploader Operator	Pondman/ Lab. Assistant Grade 2 (as defined)	Operator of all Grader Harvester, Dozer and Shiploader	Operator grader-final trim Dozer 1st Class				
Washplant Conveyor Attendant		Plant Operator 1 (as defined)	Plant Operator 2 (as defined)		Harvester and Laser equipment.				

Those currently employed on a rate higher than the new proposed levels will maintain existing rates. New starters will slot into new levels. Movement through levels will eventually absorb differentials.

Does not include arbitrated safety net adjustment.

10. Schedule 4—Parties to the Award: Delete this schedule and insert in lieu thereof the following—

SCHEDULE 4

PARTIES TO THE AWARD

Union Parties to the Award

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

Employer Party to the Award

Cargill Salt a department of Cargill Australia Limited

11. Schedule 4—Parties to the Award: Immediately following this Schedule insert a new Schedule 5—Cargill Salt—Training Committee Constitution as follows—

SCHEDULE 5

CARGILL SALT—TRAINING COMMITTEE CONSTITUTION

1.—DEFINITIONS

“Training Committee” means the Training Committee as prescribed in Clause 3.—Composition of this Schedule.

“Training Program” means the Training Program as prescribed in Clause 5.—Scope & Training Programs of this Schedule.

“Training Record” means the Training Record compiled as prescribed in Clause 10.—Training Records of this Schedule.

“TAFE” means the Department of Technical and Further Education.

“SESDA” means the State Employment Skills Development Authority.

“In-House Training” means an approved course conducted at enterprise level.

“Supplier Delivered/Vendor Training” means an approved course that is conducted by the Suppliers of Manufacturers of any plant equipment, process or technology.

“Combined Union Council” means the President and Vice President of a body comprising all Unions on site.

“Consultative Committee” comprises “CUC” and two senior management members.

2.—OBJECTIVES

(1) The Training Committee shall operate to enable employee involvement in the training process of this enterprise.

(2) The Training Committee shall aim to contribute to the development of a highly skilled workforce with a range

of skills appropriate to both this enterprise, similar type industry the metal and engineering industry.

(3) Dissemination of information on the training program and availability of training courses and career opportunities to employees.

(4) Recommending of individual employees for training and reclassification to Consultative Committee.

3.—COMPOSITION

(1) The Training Committee shall consist of the following—

- 2 Production Employee representatives
- 2 Maintenance Employee representatives
- 2 Production Employer representatives
- 2 Maintenance Employer representatives

(2) It shall be the right of both the Employer and Employees to co-opt another delegate in the event of members' inability to attend any meeting of the training committee. If it is known in advance that a representative will be unavailable due to annual leave, long service leave, sickness or any other reasons, a co-opted delegate may attend the preceding as an observer. One co-opted representative will be elected at the time the nominated representatives are elected.

(3) The employer representative on the Training Committee will be nominated by their respective Unions and elected annually by a meeting of combined union members. This meeting will be held in September of each year.

4.—MEETINGS

(1) The Chairperson. A member of the Training Committee shall be elected by the Committee to this position. The Chairperson will have equal voting rights. The Chairperson shall be elected for a period not exceeding 12 months.

(2) The Secretary shall be elected from within the Committee and shall have equal voting rights. The Secretary shall keep an accurate and permanent record of the minutes of each meeting. The Secretary shall be elected for a period not exceeding 12 months.

(3) Where agreement cannot be reached, the matter will in the first instance be referred to the Consultative Committee. In the event of continuing disagreement, the matter will go to an agreed arbitration process.

(4) The Training Committee shall meet monthly or as required with the normal monthly meeting being held at 1.30pm and finishing at 3.00pm on a day set by the Committee.

(5) A Quorum shall consist of at least half the Training Committee with an equal number of Employer and Employee representatives having voting rights.

(6) At each meeting, minutes shall be taken and distributed to each member of the Training Committee and Consultative Committee as soon as possible.

(7) Prior to each meeting, each Committee member shall be allowed sufficient time to prepare for the meeting.

(8) All items to be discussed by the Training Committee must be put on the Agenda. The Agenda shall be drawn up and distributed to all Committee members at least one working week prior to each meeting. All committee members, the Employer and the Combined Union Council may submit items for the Agenda.

(9) Relevant Union officials and Employer representatives shall have to attend and address the Training Committee meetings but shall not have voting rights.

(10) Employee representatives who are required to attend meetings or any other business in relation to the Training Committee will not receive any less income as would otherwise have been earned and consistent with Award provisions.

5.—SCOPE AND TRAINING PROGRAMS

(1) The Training Committee shall develop an enterprise training program consistent with—

- (a) The training needs of the employee, the enterprise, the Metal and Engineering trade and similar type industry.

(b) The curricula of TAFE, SESDA and other approved training organisations.

(c) The classification structure of the Award.

(2) The Training Committee shall have the authority to recommend the resources needed to develop and implement the training programme to the Consultative Committee.

(3) The Training Committee shall monitor and advise on the relevance and effectiveness of the Training Program on a regular basis to the Consultative Committee.

(4) The Training Committee shall compile and revise each year a list of available courses relevant to the Training Program.

(5) The Training Committee shall be responsible for the selection and recommendation of employees who wish to undertake courses within the Training Program. Application for training leave will also be recommended by the Training Committee.

6.—RESOURCES

Where necessary, approved external resources may be used to assist in skills assessment, accreditation and in the development and administration of the training course with the approval of the Consultative Committee.

7.—ASSESSMENT OF IN-HOUSE & SUPPLIER DELIVERED TRAINING

Employees who undertake in-house or supplier delivered training may be subject to an assessment process, determined by the Training Committee.

8.—CLASSIFICATION OF EMPLOYEES

The Training Committee at the first instance shall assess people's training and recommend re-classification of employees to the appropriate classification based on their training, record, knowledge, skill and experience.

9.—RATIFICATION OF DECISIONS

Any decision of the Training Committee shall be subject to ratification by the Consultative Committee before implementation.

10.—TRAINING RECORDS

(1) The employer shall keep a comprehensive and contemporary record of the education, skills, training, qualification and experience of its workforce separate from other personal records.

(2) The method of compiling the training record shall be recommended by the Training Committee.

(3) An employee's training record shall be kept confidential with access only being allowed to—

- (a) The employee.
- (b) The Training Committee.
- (c) The Consultative Committee and authorised staff.

11.—TRAINING OF COMMITTEE MEMBERS

Approved leave shall be granted for approved training purposes to members of the Training Committee. Committee leave shall count as service for all purpose.

EGG PROCESSING AWARD 1978.
No. R 42 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Food Preservers' Union of
Western Australia, Union of Workers

and

Western Australian Egg Marketing Board.

No. 505 of 1997.

Egg Processing Award 1978.

COMMISSIONER J.F. GREGOR.

8 August 1997.

Order.

HAVING heard Mr W. Johnston on behalf of the first named party and Ms L. Howe on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Egg Processing Award 1978, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 8 August 1997.

(Sgd.) J.F. GREGOR,

[L.S.]

Commissioner.

Schedule.

Clause 14.—Wages. Delete subclause (1) of this clause and insert in lieu thereof the following—

(1) Adult Employees

The following rates shall apply from the first pay period on or after 8 August 1997.

	BASE	ARBITRATED	TOTAL
	RATE	SAFETY NET	RATE
	\$	\$	\$
Machine Operator	363.67	24.00	387.67
Quality Controller	362.44	24.00	386.44
Freezer Room Attendant	355.47	24.00	379.47
Candler and/or oiler	353.01	24.00	377.01
Bench Hand	338.46	24.00	362.46
Trainee Candler and/or oiler	338.05	24.00	362.05
Packer and/or Cracker	338.05	24.00	362.05
Floor Hand	330.26	24.00	354.26

The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

PLASTER, PLASTERGLASS AND CEMENT WORKERS' AWARD.
No. A 29 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Anderson Industries and Others.

No. 1146 of 1997.

Plaster, Plasterglass and Cement Workers' Award
No. A 29 of 1989.

COMMISSIONER P E SCOTT.

2 September 1997.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Ms J L Dowling on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 4th day of August 1997.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

Schedule.

1. Clause 7.—Adult Trainee Casters: In subclause (4) of this clause delete the amount "\$2.24" and insert "\$2.33" in lieu thereof.

2. Clause 13.—Wages—

A. Delete subclauses (1) and (2) of this clause and insert the following in thereof—

	Wage	Arbitrated	Total
	Per Week	Safety Net	Wage
	\$	\$	\$
(1) (a) Modeller	408.90	24.00	432.90
Tool Allowance			1.13
(b) Plaster Caster	386.15	24.00	410.15
(c) Plaster Caster (Mechanical)	362.35	24.00	386.35
(d) Labourers	342.10	24.00	366.10
(e) Cement employee	338.25	24.00	362.25
(f) Trainee Casters—up to 40 per cent proficiency	263.75	24.00	287.75
Thereafter, such percentage of the plaster caster's total wage as is assessed in accordance with subclause (9) of Clause 7.—Adult Trainee Casters.			
(g) Plant Operator	301.10	24.00	325.10
(h) Bagger	301.10	24.00	325.10
(i) Washer	301.10	24.00	325.10
(j) Front End Loader	301.10	24.00	325.10
(k) Fork Lift Driver	301.10	24.00	325.10
(2) Junior Employees			
Under 21 years of age	269.40	24.00	293.40
Under 20 years of age	237.70	24.00	261.70
Under 19 years of age	225.00	24.00	249.00

B. Delete subclauses (5)(a) and (b) of this clause and insert the following in thereof—

(5) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle, pursuant to either the December, 1993 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise

agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of, have not been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

- 3. Clause 14.—Special Rates and Provisions—
 - A. In subclause (1)(a) of this clause delete the amount “\$10.71” and insert “\$11.12” in lieu thereof.
 - B. In subclause (1)(b) of this clause delete the amount “\$16.93” and insert “\$17.58” in lieu thereof.
 - C. In subclause (1)(c) of this clause delete the amount “\$22.64” and insert “\$23.51” in lieu thereof.

THE SUGAR REFINING AWARD
No. A41 of 1982.
 WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.
 Communications, Electrical, Electronic, Energy,
 Information, Postal, Plumbing and Allied Workers Union of
 Australia, Engineering and Electrical Division, WA Branch
 and

CSR Limited and Others.
 No. 1794 of 1996.

The Sugar Refining Award.
 CHIEF COMMISSIONER W.S. COLEMAN.

20 August 1997.

Order.

HAVING heard Mr C. Young on behalf of the Applicant and there being no appearance on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT The Sugar Refining Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 10th June 1997.

(Sgd.) W.S. COLEMAN,
 Chief Commissioner.

[L.S.]

Schedule.

- 1. Clause 2.—Arrangement:
 - A. Delete the number and title “2A. State Wage Principles—June 1991”.
 - B. Delete the title “Appendix 2—Parties to the Award” and insert in lieu thereof the following—
 Appendix 2—Named Parties to the Award
- 2. Clause 2A.—State Wage Principles—June 1991: Delete this clause.
- 3. Clause 7.—Wages and Allowances—
 - A. Delete subclause (1) of this clause and insert in lieu thereof the following—
 - (1) Adults: The weekly wage rates for adult employees covered by this Award shall be—

Rate Per Week	1st & 2nd Safety Net Adjustment Payment	Total Rate Per Week
\$	\$	\$

(a) **Production Employees (AWU)**
Shift Employees

Shift Operator Grade 1	430.50	16.00	446.50
Shift Operator Grade 2	414.30	16.00	430.30

Rate Per Week	1st & 2nd Safety Net Adjustment Payment	Total Rate Per Week
\$	\$	\$

Day Employees

Leading Hand Grade 1	421.30	16.00	437.30
Leading Hand Grade 2	414.30	16.00	430.30
Operator Grade 1	414.30	16.00	430.30
Operator Grade 2	403.20	16.00	419.20
Operator Grade 3	389.20	16.00	405.20

(b) **Boiler Attendants And Greasers (CMEU)**

Boiler Attendant (attending two or more boilers)	421.30	16.00	437.30
Greasers and Hot Water Attendant	403.20	16.00	419.20

(c) **Tradespersons and Others (CEPU)**

Electrician—Special Class	496.30	16.00	512.30
Fitter—Tradesperson	468.40	16.00	484.40
Electrical Fitter—Tradesperson	468.40	16.00	484.40
Welder First Class	468.40	16.00	484.40
Rigger—Licensed	422.80	16.00	438.80
Tradesperson’s Assistant	391.10	16.00	407.10

(d) These rates in paragraphs (a), (b) and (c) recognise all disabilities associated with the work of metal trades employees, except those in subclause (7) hereof.

(e) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

B. Delete subclause (5) of this clause and insert in lieu thereof the following—

- (5) Leading Hands: In addition to the wage rates prescribed in paragraph (c) of subclause (1) hereof, CEPU Leading Hands shall be paid per week—

	Per Week \$
If placed in charge of not less than three and not more than ten employees	19.00
If placed in charge of more than ten and not more than 20 employees	28.70
If placed in charge of more than 20 employees	37.20

C. Delete subclause (14) of this clause and insert in lieu thereof the following—

- (14) Minimum Wage

Notwithstanding the provisions of this award no employee (including an apprentice), 21 years of age or over, shall be paid less than \$332.00 per week at his/her ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than \$332.00.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this Award an additional rate is prescribed for any work as a percentage fraction or multiple of the ordinary rate of pay it shall be calculated upon the rate prescribed by this award for the classification in which the employee is employed.

4. Clause 10.—Overtime: Delete subclause (4) of this clause and insert in lieu thereof the following—

(4) Meal Money.

Any employee required to continue working overtime for more than one hour after his/her ordinary finishing time or required to work on Saturdays or Sundays shall be paid \$6.95 meal money for each meal time occurring during the period he/she is so working.

Provided that, except for work on Saturday and Sunday, such payment shall not apply where the employee has been notified the previous day of the requirement to work overtime, unless such overtime exceeds by more than one hour the period for which he/she was notified to provide a meal or meals.

5. Clause 19.—Apprentices: Delete this clause and insert in lieu thereof the following—

19.—APPRENTICES

(1) Apprentices may be taken in the trades or fitting and/or turning, electrical fitting or first class welding (engineering) in the ratio of one apprentice for every two or fraction of two journeymen (the fraction being not less than one) and shall not be taken in excess of that ratio unless—

- (a) the respective union party to this Award agrees; or
- (b) the Commission so determines.

(2) The following applies to adult apprentices—

- (a) An adult apprentice means a person of 21 years of age or over at the time of entering into an indenture into one of the trades as mentioned in this Award.
- (b) Where a person was employed by the employer immediately prior to becoming an adult apprentice with the employer, such a person shall not suffer a reduction in their actual rate of pay by virtue of becoming indentured.

The rate of pay for an adult apprentice shall not be less than 85% of the base tradesperson rate or shall be the minimum adult wage rate as contained in the Minimum Conditions of Employment Act 1993, whichever is the greater.

6. Appendix 2—Parties to the Award: Delete this clause and insert in lieu thereof the following—

APPENDIX 2—NAMED PARTIES TO THE AWARD

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australian, Engineering and Electrical Division, WA Branch, 401-403 Oxford Street, MT HAWTHORN WA 6016.

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, PO Box 8122 Stirling Street, PERTH WA 6849.

Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch, 27 Moore Street, EAST PERTH WA 6004.

AWARDS/AGREEMENTS— Application for variation of— No variation resulting—

BUILDING TRADES (GOVERNMENT) AWARD 1968. No. 31A of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Minister for Works and Others

and

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and Others.

No. 989 of 1994.

Building Trades (Government) Award 1968
No. 31A of 1966.

21 August 1997.

Order.

WHEREAS an application was lodged in the Commission pursuant to section 40 of the Industrial Relations Act;

AND WHEREAS the applicant subsequently advised that it no longer wished to proceed with this application;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under the Industrial Relations Act 1979, hereby order—

THAT the application be discontinued.

(Sgd.) A.R. BEECH,

[L.S.]

Commissioner.

AWARDS/AGREEMENTS— Interpretation of—

HOTEL AND TAVERN WORKERS' AWARD 1978 No. R31 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rageb Pty Ltd T/A Murchison Tavern

and

Federated Liquor & Allied Industries
Employees' Union of Australia,
Western Australian Branch, Union of Workers & Others.

No. 391 of 1997.

COMMISSIONER J.F. GREGOR.

28 August 1997.

Reasons for Decision.

On the 24 February 1997 Rageb Pty Ltd trading as Murchison Tavern (Murchison Tavern) applied to the Western Australian Industrial Relations Commission (the Commission) for an interpretation of the Hotel and Tavern Workers' Award 1978 (the Award). An applicant for interpretation of awards and orders is, by Section 46 of the Industrial Relations Act, 1979, (the Act) entitled to request that the Commission declare the true interpretation of the document. Regulation 14 (1) of the Industrial Relations Commission Regulations 1985 (the Regulations) requires that there be attached to an application for interpretation of an award, a recitation of the facts giving rise to the application and the question to which an answer is desired. In its application filed on the 24 February 1997 the Murchison Tavern complied with those requirements.

The matter before the Commission is directed to circumstances which arose when an employee was engaged on a part

time basis to do cleaning at the Murchison Tavern. This work was done every day. The job was to be for five days a week with a second employee performing the work on the other two days. After the arrangement that had been made between the Murchison Tavern and a worker commenced, the worker requested he work on every day. It was explained to him that there would be penalties involved in him working a seven day week and that it was the intention of Murchison Tavern to employ a casual to complete the remainder of the weeks cleaning. However the worker insisted he would like to do the full week and it was agreed that he would be employed on a part time basis to work seven days on the understanding there was to be no penalties other than the normal Saturday or Sunday rates. Sometime later it was suggested to the employer that the employee should not be working seven days. The result was he was immediately placed on a five day week roster and paid as normal, all penalties for work on Saturday or Sunday.

A number of issues arose from this work arrangement and were posed as questions for the Commission to answer. However before the matter was listed for hearing the issue had resolved itself to one question. In short, it is whether when an employer chooses to roster an employee to work in accordance with a roster which does not run over the same period as a pay week described in the Award, is the chosen roster deemed to be aligned to the pay period for purposes of calculation of overtime?

The argument advanced by Mr Greyson on behalf of the Murchison Tavern is that the Award uses the roster as a datum point to calculating overtime payments. He drew the Commission's attention to Clause 8 (2) (a) which includes a reference to the employer having the right to roster the ordinary hours for each worker according to the needs of the business, but there is a need to seek agreement. Where a worker is rostered over more than seven consecutive periods there are penalties that apply. By Clause 10 Overtime, overtime shall be paid for all work performed outside the rostered ordinary hours of work or outside the daily shift. Mr Greyson suggested that there was a raft of clauses which mention how calculations are to be made. But from his point of view the emphasis has to be on the rostered hours. He says the key is in Clause 20, Payment of Wages which requires that payment shall be made within three trading days of the last day of the pay period and if in cash shall be made during the workers ordinary hours. Clause 33 Roster is important; the clause provides that a roster of ordinary hours shall be exhibited in each establishment in such a place as it may be conveniently and readily seen by each worker. That roster is to show the name of each worker and the hours to be worked. It is to be drawn up in such a manner as to show the ordinary working hours for at least a week in advance. It can only be altered on account of sickness or by mutual consent between the employee and the employer or by the employer giving at least three days notice of an intention to change the roster. According to Mr Greyson there is no mention of payment other than in that part of clause 20 Payment of Wages which requires payment to be within three days of the end of a pay period.

The Commission was assisted by Ms Mawer, an officer of the Department of Productivity and Labour Relations. Ms Mawer drew the Commission's attention to relevant parts of the Award. The Commission's attention was also drawn to a variation to the Award which had been made in 1991 in proceedings before Commissioner Parks. According to Ms Mawer the effect of the amendment then approved by the Commission would allow an employer to roster employees hours according to the needs of the business so long as there is an agreement between where the work is to be rostered over seven consecutive work periods. However if the employee worked over ten starts in a fortnight then he or she would be entitled to receive overtime payments. By Clause 8(1) (b) if an employee is not required to commence work on more than ten days for each fortnight, then that pay period and the roster period must be deemed to be one and the same. This, according to Ms Mawer, in accordance with the provisions of Clause 20 Payment of Wages.

That is sufficient scan of the information placed before the Commission. The Commission is empowered to interpret awards under the powers vested in it in Section 46 of the Act. It is clear that interpretation of an award is a matter of law. (see *Great Western Railway Company v Bates* (1922) 8TC 231

at 244). The principles of interpretation have been discussed in a number of cases before the Commission but in particular they are set out in *North West Beef Industries & Another v Amalgamated Metal Industry Employees' Union* [(1989) 64 WAIG 2124]. In his reasons in that decision Brinsden J, said—

"The principles applied in interpreting awards are the same principles as are applied in the Courts of law for the constructions of deeds, instruments and statutes.....Applying those principles the argument goes, the meaning of a provision in an award is to be obtained by considering the terms of the award as a whole. If the terms are clear and unambiguous, it is not permissible to look to extrinsic material to qualify that meaning".

Olney J, in the same decision passed the comment that—

"it is now trite law that when the meaning of language read in its ordinary and natural sense is obtained, it is not necessary or even permissible to look to the intention of the parties".

These principles have been revisited in *Robe River Iron Associates v Amalgamated Metal Workers & Shipwright Unions & Others* [(1987) 67 WAIG 1097] and in other authoritative decisions that there is no need to canvas here.

On application of the principles the matter can be answered simply. The award is clear in its intent. There is no need to rely on extrinsic material such as the transcript of the hearing before Commissioner Parks. The answer to the question posed can be devised in the following way. The Award in Clause 12, Part Time Employees erects conditions under which part time employees can be employed. They are people who regularly work less than twenty hours per fortnight. The ordinary hours of part time workers can be increased in any particular pay period subject to agreement between the parties. In this case there is some debate about whether or not an agreement was made. However the issues that arise from that debate are not at large before the Commission in this case. The matter here is focused solely on determining whether the pay period created under Clause 27 Payment of Wages is one and the same as any roster period so that if a person works rostered hours outside the established pay period then that pay period is used as the basis for calculation of overtime. By clause 20 an employer may elect to pay employees in cash or by electronic funds transfer. The payment is to be made within three trading days from the last day of the pay period. The employer cannot change this method of payment without giving at least four days notice. In subclause 4 it is provided that for the purposes of effecting the rostering off of workers, ordinary wages may be paid either for actual work hours worked each pay period or an amount calculated on the basis of an average of hours worked per week.

Clause 33 provides that a roster of ordinary hours shall be exhibited in each establishment in such place as may be conveniently and readily seen by each worker. The roster is to show the name of the worker and the hours worked. It should be drawn up in such a manner as to show the ordinary working hours of each worker at least a week in advance. There is provision that the roster can be changed in certain circumstances. One then needs to examine clause 10 Overtime. By subclause (1) overtime is all work performed outside the rostered ordinary hours of work or outside the daily spread.

I have carefully examined the Award in each of the clauses where the rosters are mentioned. I can see no linkage at all between the obligation of the employer to establish a pay period and the working of a roster. Because the parties to an employment agreement are able to agree to variations of a roster, it must be that roster periods can run at different times to the pay period. This might not be so in other awards, but in this award there is clearly no linkage. The employer can use a different roster period as long as payment is made within three days of completion of the roster period and, according to the information which has been put before the Commission in this case, that is precisely what happened. As long as that obligation is met it seems to me that there is no obligation upon the employer to calculate overtime other than by examining the roster that has been published and ascertaining whether work has been done outside that roster. It work has been done outside that roster it is clear there is then no need to relate that back to a pay period.

The answer to the question number 2 posed in the application is in the affirmative. Overtime is calculated by using the published roster to determine the ordinary hours and not by using the pay period.

Appearances: Mr D. Greyson appeared on behalf of the applicant.

Ms K. Mawer appeared on behalf of the Department of Productivity & Labour Relations.

- (c) Maintenance Person
- (d) Domestic
- (e) Supervisor
- (f) Care Worker
- (g) Child Care Worker

A copy of the Agreement may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J. A. SPURLING,
Registrar.

18 August 1997

NOTICES— Award/Agreement matters—

Application No. PSAA 3 of 1997.

APPLICATION FOR AN AWARD ENTITLED "GRAYLANDS, SELBY-LEMNOS AND SPECIAL CARE HEALTH SERVICES AND PERTH DENTAL HOSPITAL AWARD 1997".

NOTICE is given that an application has been made to the Commission by The Civil Service Association of Western Australia Incorporated under the Industrial Relations Act 1979 for the above Award.

As far as relevant, those parts of the proposed Award which relate to area of operation or scope are published hereunder.

3.—AREA OF OPERATION

This Award shall apply throughout the State of Western Australia.

4.—SCOPE

This Award shall apply to all Government employees employed by the Metropolitan Health Services Board working in Professional, Administrative, Clerical and Technical positions in the following workplaces.

1. Graylands Selby-Lemnos and Special Care Health Services
2. Perth Dental Hospital

A copy of the proposed Award may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J. A. SPURLING,
Registrar.

18 August 1997

Application No. AG 183 of 1997.

APPLICATION FOR REGISTRATION OF AN INDUSTRIAL AGREEMENT TITLED "GRACEVILLE WOMEN'S CENTRE—SALVATION ARMY INDUSTRIAL AGREEMENT".

NOTICE is given that an application has been made to the Commission by The Salvation Army (Western Australia) Property Trust under the Industrial Relations Act 1979 for registration of the above Agreement.

As far as relevant, those parts of the proposed Agreement which relate to area of operation or scope are published hereunder.

3.—SCOPE

This Agreement shall apply to all employees employed in the classifications in Clause 22.—Wages at Graceville Women's Centre, to the Salvation Army and to the Australian Liquor, Hospitality & Miscellaneous Workers Union of Australia, WA Branch.

22—WAGES

The classifications set out in this clause are—

- (a) Qualified Cook
- (b) Cook

INDUSTRIAL MAGISTRATE— Complaints before—

IN THE INDUSTRIAL MAGISTRATES COURT
HELD AT PERTH
WESTERN AUSTRALIA.

Complaint No. 228 of 1995.

Heard: 7 March 1996.

Delivered: 29 March 1996.

BEFORE: MR I.G. BROWN, S.M.

COMPLAINANT—AUSTRALIAN LIQUOR,
HOSPITALITY AND MISCELLANEOUS WORKERS
UNION, MISCELLANEOUS WORKERS DIVISION,
WESTERN AUSTRALIAN BRANCH

and

DEFENDANT—METRO MEAT INTERNATIONAL LTD.

APPEARANCES —

Mr Rosales-Castaneda appeared for the Complainant.

Mr M. Darcy appeared for the Defendant.

Catchwords

Costs—Industrial Magistrates Court—costs upon dismissal of complaint are discretionary per S.81 CA (1). If costs for witnesses allowed Reg. 3(1) adopts section 152 of the Justices Act. Held that Local Court Scale of Costs is most appropriate guide to assess quantum of costs allowed under S.152.

The defendant seeks an order that the complainant pay its costs which were itemised as follows,

1. Air fares for John Salter—\$1000
2. Wages for John Salter—\$ 575
3. Accommodation for John Salter—\$175
4. Wages for Desmond Griffiths—\$400
5. Wages for Mervin Darcy—\$275

Having heard oral submissions from each party as to the issue of costs the court ordered that evidence of actual payment be provided within 7 days to the Clerk of Court. Material provided by the defendant satisfies me that actual costs incurred were as follows,

John Salter—Return Fare (Adelaide—Perth—Adelaide) \$995

John Salter—Salary paid for 1 day \$575

Desmond Griffith—Salary paid for 1 day \$400

Mervin Darcy—Salary paid for 1 day \$275

Given that the hearing date (March 1995) for this matter was fixed by the Court on 29 November 1994, that gave all parties months notice of the hearing date. In those circumstances bookings for air travel to Perth should have been made for Mr Salter as soon as possible and I am satisfied a return fare of \$500 was available at that time. As each party is under an obligation to be ready for trial at the callover and also mitigate their expenses, I am only prepared to allow that amount. The claim for accommodation is in my view reasonable.

The discretion to award costs upon the determination of a complaint in the general jurisdiction of this court (as distinct from the prosecution jurisdiction as defined in subsection 81

CA (1) of the Industrial Relations Act) is set out in section 83 (2) of the Act ie.

“(2) On hearing of an application under subsection (1) the industrial magistrate’s court may, by order—

- (a) if the contravention or failure to comply is proved, issue a caution or impose such penalty as the industrial magistrate’s court considers just but not exceeding \$1,000 in the case of an employer, organisation or association and \$250 in any other case;
- (b) dismiss the application,

and subject to subsection (3), in any case with or without costs, but in no case shall any costs be given against the Registrar, a Deputy Registrar, or an Industrial Inspector.”

Subsection 83 (3) is not relevant as the only costs sought are for witnesses expenses.

The existence of a specific reference to costs in Regulation 3 (1) of the existing Industrial Magistrates Courts Regulations requires that section 152 of the Justices Act be considered as the basis for costs upon a dismissal. However I am satisfied that in deciding what amount is both just and reasonable when exercising the general jurisdiction of this Court the Local Court Scale of Costs should be used as a guide, that view is consistent with Section 83 CA (2) of the Act which states that the practice and procedure to be observed is that provided in the Local Courts Act 1904, as if the proceedings were an action within the meaning of that Act.

In my view the issue of costs is not a matter of practice and procedure. Halsbury, at Volume 37, 4th Edition explains the meaning of the term “practice and procedure” as follows,

“In its complementary character, civil procedural law is ordinarily contrasted with substantive law. Substantive law creates rights and obligations and determines the ends of justice embodied in the law, whereas procedural law is an adjunct or an accessory to substantive law. But this does not mean that civil procedural law should be regarded as secondary. The two branches are complementary and interdependent, and the interplay between them often conceals what is substantive and what is procedural. It is by procedure that the law is put into motion, and it is procedural law which puts life into the substantive law, gives it its remedy and effectiveness and brings it into being.

In its protective character, civil procedural law represents the orderly, regular and public functioning of the legal machinery and the operation of the due process of law.

In this sense, the protective character of procedural law has the effect of sustaining and safeguarding every person in his life, liberty, reputation, livelihood and property and ensuring that he does not suffer any deprivation of his rights except in accordance with the accepted rules of procedure.

In its remedial or practical character, civil procedural laws deals with the actual litigation process itself in accordance with the practice and procedure of the courts; and in this sense it enhances the importance and application of the rules, practices and procedural modes and methods for the conduct of the judicial process.”

It is sufficient to say that costs are a matter of substantive law, whereby obligations to pay are created. Costs issues only arise after the complaint is determined and the court is asked to make a decision as to costs, which is binding on both parties. In determining what amounts should be allowed, the Local Court Scale is an appropriate guide in exercising the discretion under section 151 and 152 of the Justices Act. The scale under the Official Prosecutions (Defendants Costs) Act would be quite inappropriate for what are, in essence, civil proceedings.

The current Local Court Scale of Costs, as determined on 1 December 1994, provide for allowances for witnesses at item 33, as follows

- (a) persons carrying on a business or profession as principals, a daily allowance of up to \$1000 (max.).
- (b) all other persons are subject to a maximum of \$200 per day and regard is to be had to the actual amount of wages (if any) actually lost by the witness.

- (c) reasonable expenses may be allowed for travelling expenses actually paid plus a reasonable sum for food and accommodation.

In my view Mr Salter can be regarded as a principal of the defendant company and on that basis I allow his claim for \$575. Mr Griffiths and Mr Darcy are not principals of the company and accordingly I allow each the sum of \$200 for their attendance as witnesses. I recognise that to some extent the defendant company will suffer actual loss as a result of that lesser allowance but it is my view that those sums are reasonable in all the circumstances.

I have also considered the complainants submissions that costs should not generally be awarded in this jurisdiction. I reject that proposition. In this court, as distinct from the Commission, litigants must be prepared to abide the outcome and pay costs accordingly. I respectfully adopt what Commissioner Ng said in *Singh v. Singh*, Appeal no. 1256/91 delivered 8.4.93 ie.,

“The object of costs is not to punish the unsuccessful party, but to indemnify the successful party against costs that he had been put to. Following from here, a successful litigant should not, generally speaking, be deprived the costs of the litigation unless there are some special reasons for doing so.”

I also adopt the general thrust of the High Court in *Latoudis v. Casey* 1990 ALR 151.

It follows from the above that the complainant is ordered to pay the defendants costs, fixed at \$1,650.00.

These reasons will be published without the need for any further appearances.

I.G. Brown S.M.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Phillip Clarke
and

Robert Auguste and WA Consultancy Management Pty Ltd.

No. 1589 of 1996.

COMMISSIONER A.R. BEECH.

22 August 1997.

Reasons for Decision.

Mr Clarke claims that he was an employee of either Mr Robert Auguste or WA Consultancy Management Pty Ltd and that he has been denied by his employer a benefit to which he is entitled under his contract of employment. Both respondents to this matter deny that Mr Clarke was ever an employee. The Commission will only have jurisdiction to deal with Mr Clarke’s claim if he was an employee and accordingly this issue must be decided first. In order to determine that issue the Commission must look at the facts of this matter and apply to those facts the various tests which have been established over the years in order to determine whether the true relationship between Mr Clarke and either of the respondents was that of employer—employee. Of these the most prominent is the right of an employer to control the work of the employee. The importance of control lies not so much in its actual exercise as in the right of the employer to exercise it (*Stevens v. Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16 at 24; and see *Burswood Resort (Management) Ltd v. Actors Equity of WA* (1994) 75 WAIG 361). With that in mind I turn to consider the evidence.

There is evidence that Mr Auguste did have some control over Mr Clarke’s work although the extent of this control is

not entirely clear to me. It is difficult to resolve the conflict in the evidence here. Mr Clarke's evidence is that Mr Auguste did control him in his work: "it was anything that he wanted me to do, really, on a day to day basis. He'd just give me instructions and I'd do that ... he was always quite specific with his instructions as to what I was to do" (transcript pages 40-41). Mr Auguste's evidence is that Mr Clarke "would send letters off and make communications direct with clients and people with whom we did business without any influence or direction from me as to the overall instruction" (transcript p. 119). I suspect on balance that Mr Auguste retained a right to control Mr Clarke in his work although there was little need to do so on a day to day basis. However, even if I were to reach that conclusion, the right to control is only one factor, albeit the most prominent. It will not be sufficient to establish the existence of an employer—employee relationship if other factors point against that relationship.

It is not in dispute that Mr Clarke himself performed work at least on behalf of WA Consultancy Management Pty Ltd between June 1993 and August 1994. It is significant that no tax was deducted from any payments made to Mr Clarke, that he was never given a group certificate, that he was not paid annual leave, sick leave, nor any superannuation component. Further Mr Clarke and his wife registered a business name Bibra Lake Financial Consultants and between at least July 1993 and April 1994 invoiced WA Consultancy Management Pty Ltd for "consulting fees" on a monthly basis (exhibit B). The registration of a business name is a positive indication that he was not an employee. As stated by Wallace J. in *T.W.U. v. Readymix* ((1991) 61 WAIG 1705)—

"In *AMP v. Chapman* and another (1978) 18 ALR 385 the ability of the owner/ driver to incorporate was considered an important indication against the agreement between the parties being one of contract of service. So too should the existence of a husband/wife partnership."

Mr Clarke invoiced one of the respondents on behalf of the business name. Invoicing for work performed is not a feature of an employment relationship. Nor is the fact that Mr Clarke also performed work for a company of which he is a director, that being Sardinia Pty Ltd. Generally, an employee is not able to perform work for others. He also did not lodge an income tax return as an employee. These indicate that from his own point of view, Mr Clarke was not an employee.

There are a number of other matters about which there is conflict in the evidence. These matters relate to the regularity of the hours worked, whether the work was performed mainly at the offices of Mr Auguste and WA Consultancy Management Pty Ltd or whether work was performed mainly at Mr Clarke's residence. Where Mr Auguste's evidence conflicts with Mr Clarke's evidence in this regard I generally prefer the evidence of Mr Auguste. I reach this conclusion because the documents which comprise exhibit C demonstrate a greater amount of work done at Mr Clarke's home than I had understood from Mr Clarke's own evidence. Mr Auguste gave evidence that, particularly when he moved to a home unit, that the room he established as his own office was not big enough for 2 people to work there and that Mr Clarke would visit twice a week. He was not cross examined on this evidence and I accept it. On these 2 points therefore I do not find that Mr Clarke has established them as points in his favour.

As I understand Mr Clarke's submission he accepts that it is open for me to conclude that he was not an employee up to the 12th May 1994. Indeed, he is caught by his own words in a letter to Mr Auguste in February 1994 where Mr Clarke himself agreed with Mr Auguste that they were in business together and did not have "boss/worker relationship" (Exhibit E). Mr Clarke relies upon a written agreement between him and Mr Auguste of the 12th May 1994 (exhibit 7) which he says changed, or clarified, their relationship from that date forward. Indeed, he also submits that it operated retrospectively to the commencement of his working relationship. This document is headed "Salary/Profit Share Agreement—Robert Auguste/Brian Clarke". It commences—

"The following is the agreement as at 12/5/94 for the payment to Brian Clarke (BC) by Robert Auguste (RA) of income and profit share for projects undertaken".

The document is certainly an agreement between both parties but I am not convinced after reading the whole of it that it is a

document that supports Mr Clarke's claim that he was an employee. It is true that the document indicates that Mr Clarke would have a base annual salary of \$35,000.00. A "base annual salary" is consistent with an employment relationship, as is the provision for Mr Auguste to also "pay" Mr Clarke a car allowance and Mr Clarke's home telephone account as from the 1st June, 1994. However, if Mr Clarke is to be taken as being an employee because he receives a "base annual salary" then so is Mr Auguste who is also described as receiving a "base annual salary". I find that improbable on the evidence before me. The balance of the document is a proposed distribution of the profit share of various projects. It was prepared by Mr Clarke. It does not use the language of employer—employee. Rather, it regards Mr Clarke and Mr Auguste as equal in status but not in remuneration. Given that it includes details of Mr Auguste's profit share, I find it inconsistent with the notion of an agreement between an employer and an employee. In the context of the relationship overall, I am not convinced that Mr Clarke was indeed an employee based upon Exhibit 7. If exhibit 7 falls away then there is little else to support Mr Clarke's claim.

It is important to stress that it is up to Mr Clarke to show, on the balance of probabilities, that he was an employee. I have been unable to find any conclusive evidence brought by Mr Clarke which establishes that he was. The question of control is, of itself, inconclusive. The manner of control exercised by Mr Auguste would be equally consistent, for example, with the provision of a contract for services between Mr Clarke and either Mr Auguste or WA Consultancy Management Pty Ltd. A letter signed by Mr Auguste which seemingly is to assist Mr Clarke in obtaining finance from a bank, refers to Mr Clarke as being "employed" (Exhibit 4). However, this document is undated and, as far as I am able to tell, relates to a period when Mr Clarke was regularly invoicing WA Consultancy Management Pty Ltd. In my view, that invoicing effectively cancels out the worth of that letter. The fact that Mr Auguste signed a letter stating that Mr Clarke was an "employee" when Mr Auguste did not think that he was an employee does not reflect well upon Mr Auguste. But that of itself does not convert whatever their relationship was to an employment relationship. Similarly, it seems the statements made by Mr Auguste on Mr Clarke's behalf in October 1994 in the District Court which suggest that he was Mr Clarke's employer are not accurate. Rather, they were seen by him as offering some hope to Mr Clarke at a time when Mr Clarke was facing a prison sentence. The statements are not conclusive that the relationship between them was that of an employee—employer.

There is conflict in the evidence but I have been assisted in trying to place in context the various matters which have been drawn to my attention by Mr Auguste's evidence. He has stated that his businesses are not set up to employ anyone. He does not have the regularity of cash flow to enable a salary to be paid for work performed. He was not cross-examined by Mr Clarke on this aspect of his evidence and I accept it. It leads me to the conclusion that there was indeed a business relationship between Mr Clarke and Mr Auguste or WA Consultancy Management Pty Ltd. However, the evidence does not establish that Mr Clarke was an employee of either Mr Auguste or WA Consultancy Management Pty Ltd. The Commission cannot deal with Mr Clarke's application and accordingly it will be dismissed for want of jurisdiction.

Order accordingly.

Appearances: Mr B.P. Clarke appeared on his own behalf as the applicant.

Mr A. Atkinson (of counsel) appeared on behalf of the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Phillip Clarke

and

Robert Auguste and WA Consultancy Management Pty Ltd.

No. 1589 of 1996.

22 August 1997.

Order.

HAVING heard Mr B.P. Clarke on his own behalf as the applicant and Mr A. Atkinson (of counsel) on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be dismissed for want of jurisdiction.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Damian Clarke

and

The Shop, Distributive and Allied Employees'
Association of Western Australia.

No. 97 of 1997.

COMMISSIONER J.F.GREGOR.

30 July 1997.

Reasons for Decision.
(extempore)

THE COMMISSIONER: These are my reasons for decision. On 17 January 1997, the applicant applied to the Commission for an order pursuant to section 29 of the Industrial Relations Act, 1979 (the Act), on the grounds that he had been unfairly dismissed from his employment with the Shop, Distributive and Allied Employees' Association of Western Australia (SDA).

The relevant history insofar as it is necessary to recite in these reasons is: the applicant commenced employment with the SDA in February, 1987. He was subject to training in a scheme that had been introduced by the then Secretary of the SDA Mr Mark Bishop (now Senator Mark Bishop). It appears from the evidence that the applicant was the recipient of more training than was the norm for a number of organisers. Catherine Doust gave some evidence about her involvement and commented that the training had been a longer period than was usual. Mr Bishop's evidence was that the training period was probably, all-in-all for about nine months.

Later, the applicant was deployed to work for the SDA in the north-west of Western Australia, and remained there for three years. It was during this period that some difficulties began to arise with the discharge of his duties. Mr Bullock, the then Assistant Secretary of the SDA, had cause to discuss with him, his approach to a particular dispute in Mount Tom Price where he had mounted a single-person picket line for a period of four days.

There were other issues, too, concerning an alleged failure to visit members in some of the more remote areas such as Derby and Broome. Mr Bishop gave evidence that he, in his discussions with the managers of the chains that operate in that area, had cause to be told about these failures. I interpolate from his evidence that he took those matters up with the applicant from time to time.

The applicant finished his tour of duty in the North West and returned to Perth. He was allocated an area to organise in accordance with a system used by the SDA to service its

membership in the metropolitan area. As I understand it, the Organisers are allocated various sectors of the metropolitan area, and those sectors are in some sort of numerical balance insofar as membership is concerned. The applicant was given a sector to organise in that context of allocations.

Thereafter, commenced a series of problems, which, according to the evidence, were manifest by a need for the executive officers of the union to bring to the applicant's attention, some failings in the way he delivered the service. Mr Bullock said that he had occasions amounting to in excess of ten per year, in fact, he said, many, many more occasions than that, to bring to the applicant's attention, problems with the way he was operating. Mr Bullock described these occasions as "counseling".

I understand him to mean, "counseling", in that sense, to be more in the line of supervision; of trying to get things done properly, in accordance with the union's policies, and not "counseling" in the sense that is used in an incident that I will relate later in these Reasons.

The main problems seemed to relate to complaints from members that they had not received service. Those complaints mostly relating to a failure to, in an expeditious manner, deal with the issues raised. Organiser, Catherine Doust gave some examples which were extant when she took over the organising area that had been previously covered by the applicant. Her evidence is clear that she had difficulty in getting the members back into accepting that the SDA would look after them in the way that they required

There was quite a deal of evidence concerning a mobile phone. It was said that on occasions that the phone was switched off. The applicant agreed that he had done so from time to time, but he particularly sought to place blame for communication failures on operational difficulties with the mobile phones. However that does not explain that the complaints about him being difficult to contact by phone, stretch over quite a considerable period. But I will return to that later.

There were complaints, too, about an alleged belligerence towards employers, particularly managers and that the applicant, contrary to the express policy of the SDA, seemed to take some pleasure if a manager was dismissed or somehow suffered during the course of dealing with a complaint which had been raised by the applicant in his sphere of operations.

There were a wide range of issues, but basically under heads of complaint outlined. According to the evidence of Mr Bullock and Mr Bishop, there were continual attempts to resolve the complaints as they arose.

Another matter that needs to be mentioned in this recitation, is the question of the applicant's work with the Australian Labour Party (ALP). It seems to me that the *raison d'être* of his case, is that when he did work for the ALP, it was as if he was working for the SDA. This led to an incident after the State Elections on 14 December 1996. On that day he had worked on the polls as booth captain, not at the direction of the SDA, but in accordance with arrangements he made with another person. He decided to take the Monday off and he rang the SDA office and told the receptionist he would not be in. He was doing what he described as "other work".

This caused the Secretary of the SDA, Mr Joseph Bullock, to ring his home. Mr Bullock spoke to the applicant's wife and it is common ground that he used language which was inappropriate, and which gave offence to her. She reported the conversation to the applicant and according to her evidence, Mr Bullock's request that the applicant attend upon Mr Bullock at the SDA office as soon as he could.

A meeting took place between them—a meeting at which another person was asked to be present. According to the evidence, this was because Mr Bullock had it in his mind that this meeting could result in a formal warning to the applicant about his conduct. This Mr Bullock communicated to the applicant at an early stage in the meeting. He was also asked whether he wished to have another person present, he did not. There was a conversation between Mr Bullock and the applicant in which a number of issues were raised with him. The first one, I think, if there was a chronology that can be recounted, dealt with recruitment performance.

It seems that the applicant had not recruited as many new members as other organisers during 1996 and that was an

important matter which needed to be discussed. He had been on long-service leave, but even so, the Secretary thought it was a matter that ought to be raised and discussed.

The matters which had been canvassed with him on numerous occasions were raised again. Those matters dealt with the inability to contact him, the question of dealing with membership in terms of service and how he treated shop stewards. Each of these matters were laid in front of the applicant and he was given a chance to address them. According to his evidence, he rejected all of the complaints, apart from the complaint about his recruitment performance. As for the key issue which caused the meeting to take place, that is, his taking Monday off, he rejected Mr Bullock's complaint in its entirety.

In his own evidence, the applicant said that the organisers were free to organise their own timetable, and he was merely doing that on the Monday. He did not seem to accept that he had any obligation to come to work and it seems from his evidence that was related to his understanding that he was working on the Saturday, when the elections took place.

After the meeting Mr Bullock committed a record of the meeting to writing. That record is not before the Commission, but I understand a record was made with the intention that it would be given to the applicant for him to sign as an acceptance of a formal counselling. I will comment later in my analysis of the issues, the status I give to that counselling.

The evidence of Organiser Dolly Cran is not important in the chronology of the matter. It appears that Mrs Cran and the applicant were quite good friends. He felt free to ring her quite late at night on occasions to tell her about his problems. He did so on the evening of 16 December 1996, and gave her a report about the meeting. I think her clear evidence was that he told her that he did not accept the counselling at all. He thought it was wrong.

Between 16 December 1996 and New Year's Day 1997, he had a series of conversations with Mrs Cran. He talked about some things which led her to develop some grave concerns about what he was doing. He talked about contracts with various political figures who would, one would think, have interests which were inimical with that of the SDA. They were people who may have different views to those of the SDA. Dolly Cran became quite concerned about the potential damage which may be done to the SDA if the applicant continued with this line of thought even if there was not anything of substance behind it.

She was concerned about what might happen. So on 2 January 1997, she went to the home of Mr Bullock and told him about the situation, and shared her concerns with him. He rang Mr Bishop, who is the president of the SDA. It is not surprising that he would ring Mr Bishop. I would think that a secretary of any organisation in such a position would ring the head of the body and communicate the concerns. There was a meeting between the two men. What concerned them is that the events reported by Dolly Cran gave rise to feelings that the loyalty of the applicant, which had protected him over a number of years in circumstances where his performance might have led to further action being taken against him, was now in question.

Mr Bishop gave evidence that when he was Secretary of the SDA, he had cause to consider on a number of occasions about whether he should dismiss the applicant, but he had decided that he would not go ahead with that because of what Mr Bishop defined as the unswerving loyalty of the applicant to the officers who headed the SDA, and the SDA itself. Mr Bishop made it clear that the philosophy on which the rebuilding of the SDA was based, was loyalty to him and the other executive officers, and the SDA as a union and the integrity of officers to execute the wishes of the Board of Control. If those things were done, it appears that other deficiencies could be forgiven. By 2 January 1997, though, there were doubts in the minds of both Mr Bishop and Mr Bullock and that continued to be the case insofar as the applicant was concerned. They decided that they would have to meet with him for the purpose of deciding for themselves whether that underpinning part of the relationship, which was important to them, that is, loyalty, still existed.

The evidence is that they had no preconceived notions about what might come out of that meeting they had the meeting to try and test with the applicant, the question of his loyalty.

The meeting took place and the questions of loyalty, along with other matters, were raised with the applicant. But insofar as this matter is concerned, the key for those two senior officers of the SDA was to establish that his fundamental loyalty existed. Mr Bullock had it in his mind after the counselling on 16 December 1996, that he would review the performance of the applicant at the end of 6 months, in any event. I understand from his evidence that was communicated to the applicant at the time. But if it was not clearly communicated, it was at least implicit that there would be a review. So the question of the behaviour of the applicant was under review in any event and it was against that background that the issue of loyalty was being discussed.

Both Mr Bishop and Mr Bullock were unable to satisfy themselves during the time they had a break in meeting with the applicant, that he had satisfied them concerning his loyalty. They went back to the meeting and asked him again. He gave an answer which they both interpreted as not being fulsome enough to satisfy them that he would give his loyalty to Mr Bullock and the Assistant Secretary, Martin Prichard, in a way that he had given his loyalty in the past to Mr Bishop and Mr Bullock. This led them to dismiss him.

That is a sufficient scan of the history in the matter. Before I make findings concerning the witness's credibility, I need to quickly deal with the matters of law that need to be applied here.

I do not intend to discuss in detail the law concerning section 23AA of the Act. Suffice to say that the tests are set out by Senior Commissioner Fielding in his reasons in *Jaggard v. Tranby* (1996) 76 WAIG 4720. I make the observation that on the evidence before me, those tests have been met.

Having made this preliminary finding, the question is whether the SDA has nevertheless acted harshly, unfairly or oppressively in its dismissal of the applicant. It is for the applicant here to establish that the dismissal was, in all the circumstances, unfair. As Mr Nisbet has submitted, the test for ascertaining whether the dismissal is harsh or unfair, or oppressive, is that outlined by the Industrial Appeal Court in *Undercliffe Nursing Home v. Federated Miscellaneous Workers Union of Australia* (1985) 65 WAIG 385.

The question to be answered is whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant, as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the Act may still be unfair if, for example, it is effected in a manner which is unfair. But if the employment has been terminated in a manner which is procedurally irregular, that will not of itself mean the dismissal is unfair (see *Shire of Esperance v. Mouritz* (1991) 71 WAIG 891 and also *Byrne v. Australian Airlines* (1995) 65 IR 32).

If I just go back to the *Shire of Esperance v. Mouritz*, (*Supra*) case for a moment, I note that in that case, Kennedy J observed that—

“Whether an employer in bringing about a dismissal adopted procedures which were fair to the employee, is but an element in determining whether the dismissal was harsh or unfair.”

I accept what Mr Nisbet says about the examination of the whole of the circumstances as being the proper test to determine unfairness.

The decision of the Full Bench of this Commission in *Gilmore v. Cecil Bros*, (1996) 76 WAIG 4434 at 4446, has been examined and I do not need to discuss the comments of Gray J in *Liddell v. Lembke* (trading as *Cheryl's Unisex Salon*) (1994) 127 ALR 342. I do not think I need to discuss those in any detail, in view of the decision I will come to here but I do wish to draw to the attention, a matter which is important and that is the comments of Dixon and McTiernan JJ and in *Blythe Chemicals v. Bushnell* (1933) 49 CLR 66. The particular citation is one to which I gave considerable attention to in my decisions in the Robe River dismissals (see *AMWU v. Robe River Iron Associates*) and that relates to the question of repugnant conduct.

I will not read all of the citation, but it will suffice to say that in the statements of *Dixon and McTiernan JJ*, they make the comment that—

“Conduct which in respect of important matters is incompatible with the fulfilment of an employee’s duty, or involves opposition or conflict between his interests and his duty to his employer or impedes the faithful performance of his obligations, or is destructive of the necessary confidence between the employer and employee, is a ground for dismissal.”

The citation goes on to say—

“But the conduct of the employee must itself involve the incompatibility, conflict or impediment or be destructive of confidence. An actual repugnance must between his acts and his relationship must be found. It is not enough that ground for uneasiness as to its future conduct arises.”

I will discuss this further in my analysis.

Insofar as witness credibility is concerned, I first deal with the evidence of the applicant.

Insofar as the witness evidence is concerned, I say this. The applicant gave evidence, and I must record here and I do so in the event of any further issues arising from this decision that the Commission in effect conducted an examination-in-chief of the witness, because the applicant, who was unrepresented seemed unable to present the matters which were relevant. In doing so, I was as careful as I could be not to become involved in the case in any advocacy role but I attempted to assist the applicant within reasonable bounds.

I did to for expedition and to ensure that he had the best opportunity within those bounds to present the information he needed to put. He was subject to detailed cross-examination. I have to say that there was considerable conflict between the answers he gave, or the propositions he advanced in examination-in-chief and his cross-examination. He was evasive, he was circular. I am of the view that he was inclined to obfuscation about important matters, and his evidence left a little to be desired.

We heard during this case from a number of other witnesses as well. As for Nathan Verity, I have no reason to doubt that he told the Commission the truth in accordance with his memory of the matters. There were two witnesses, Cecil Fernandez and Simone Randall, whose evidence I accept. It does not add much to what I need to decide, but there was nothing that I could see that will call their evidence into question.

I accept the evidence of Dolly Cran as being that of a person of truth. I see no reason to believe that Anthony Hoh gave his opinions of the applicant in a honest way, whether he still has these opinions after his experiences here, is a question to which I do not turn my mind.

Insofar as the evidence of the important witnesses and before I go away from the witnesses for the applicant the evidence of Jill Clarke I do not have any difficulty with, except that I observe that it is hard for a person who is married to someone deeply involved in a case to be completely objective. I do not say that Mrs Clarke tried to mislead me in any way at all but I just think that some of her answers about why she wrote letters to Mr De Brun, were a little self serving.

Insofar as the witnesses for the respondent are concerned, the important two are Joseph Bullock and Mark Bishop. I have no reason to believe that the evidence of Mr Bullock is not truthful and given with his best recollection of the events over the years. It is clear from the interchange between Mr Bullock and the applicant, during Mr Bullock’s cross-examination, that there is a little personal friction between them. It is probably understandable in the circumstances and I think Mr Bullock was still “the boss”, even though he was in the witness stand. At least that is how it appeared.

I have no difficulty in accepting the evidence of Mark Bishop as being truthful in every respect. He outlined the vision he developed and executed for the SDA. In a clear way showed how he expected that people working for the SDA act in consonance with that vision. His evidence concerning the relevant meetings with the applicant, supported the independent testimony of Mr Bullock.

I need to mention the evidence of Catherine Doust. I thought she was an impressive witness, and told the Commission a

truthful account of her involvement in the matters. I have not referred to all of the witnesses called but I cover those in general by saying that where the evidence of the applicant himself differs with that of the respondent’s witnesses, I accept that of the respondent’s witnesses. I must observe that a number of the witnesses called by the applicant, gave evidence contrary to his position.

How do I see this matter? We have a situation where I think it is fair to say that the SDA as an employer was prepared to accept quite an amount of negative behaviour as an employee on the applicant’s behalf, because he was loyal and was prepared to serve the interests of the union. As an employer, the SDA is entitled to put its priorities upon what it expects of its employees but even if it had not put a priority on loyalty, every employer at common law is entitled to expect loyal performance. It is trite to say that it is nothing special that in an employment relationship there is an expectation of loyal performance on behalf of an employee.

It is not an unusual thing. It may have been highlighted here because of the particular emphasis placed upon it but it is clear from the evidence that the applicant was less than a model employee. It is open to find, and I do, that he did not do his job well.

There is far too much evidence of complaints about the way he conducted himself for one to reach any other conclusion than there was validity in those complaints. Ultimately his employer was entitled to take account of those complaints as it did on 16 December 1996.

As I said earlier, Mr Bullock referred to counselling of the employee on a number of occasions. In a number of decisions I have written about the difference between counselling and the normal directions in the workplace. I do not regard the majority of the directions as to performance which were given by Mr Bullock and Mr Bishop, to be counselling, in the sense that it would lead an employee to the conclusion that their job was at risk and that is the key to it.

What happened here was that there was much frustration by Mr Bullock about the failure of the applicant to discharge his duties properly. It is open to find on the evidence that was brought to his attention, regularly, at organisers’ meetings. It had been done so by Mr Bishop as well, when he was the Secretary so much so that he had thought about the continuation of the applicant’s relationship with the SDA, and had decided that, on balance, he was worthwhile to keep, if I can put it in that way.

But on 16 December 1996, there was a meeting of an entirely different character to those previous types of warnings. Here was a meeting which was, on the evidence, constructed specifically to deal with an issue which was the catalyst, or the straw that broke the camel’s back, in terms of how the SDA was going to continue to treat its relationship with the applicant here.

On 16 December 1996, he did not come to work. I think he had the view that there was a relationship between his work in the political wing of the ALP and his work as an employee of the SDA itself. He is wrong in that. It was not part of his contract of service at all. He has not proved that in any shape or sense at all. It is not unusual as I commented during the course of the hearing that there is a mixture of political and industrial activity in the Australian political scene. It is not restricted to the Labor side of politics at all and I think I mentioned that if you went to an industrial organisation such as the Chamber of Commerce and Industry of Western Australia, you would not find many Marxists working there as advocates not that I am saying that there are many in the SDA either, but I just make the point that to be involved in industrial relations work as an organiser, an official or an advocate, it is not unusual that people go and work in places where they have a philosophical identification or a commitment, even.

So working for the political party, if one is in an industrial organisation, is something that is part of Australian political history. However it does not mean that there is any particular overlay on the real contractual relationship between the parties. The real contractual relationship here was that the applicant worked as an organiser for the SDA, for which he was given a valuable consideration in the form of wages. He was to exercise the policies of the union, and carry out his duties in

accordance with the instructions that were given from time to time.

If he thought that he was entitled to have Monday off on the basis that he had worked on the elections, I see no contractual validity for that at all. He should have come to work. He did not. There was a meeting called as a result, that meeting canvassed and brought into focus a number of issues about his performance, which had been touched upon before, but not gathered together in a way that he would think at the end of the discussion that his job was a risk. At the end of this discussion (on 16 December 1996), he did think his job was at risk and I accept the evidence of Dolly Cran, concerning that. The meeting on 6 January 1997 is also important. That is a meeting where the termination occurred.

There was no doubt that it was in the applicant's mind on 6 January 1997, his job was under threat. Again there is evidence that indicates that he had communicated that opinion to others.

On 6 January 1997, he refused to give a commitment in the form required by the the senior officers of the SDA he failed to convince them that he would serve the SDA loyally and they exercised a right to dismiss him. In doing so, they did not act harshly, oppressively or unfairly.

The applicant has been given many opportunities to perform within the type of policy framework which is laid down, and he failed to do so. That was brought to a head on 16 December 1996 and his conduct between 16 December 1996 and 6 January 1997, was such that the intention to let him work for 6 months and review him became not achievable and the contract was brought to an end.

If I am wrong about the finding of unfairness, I say this about reinstatement. It is clear here that there has been an actual repugnance between this applicant's acts and his relationship with the SDA. He admitted that he is the author and distributor, with the help of others, some unnamed, of (*Exhibit N1*). I can think of no document that I have seen, which has been more specifically designed to give damage, than that document. It contains false information it contains half-truths. It was true that the fees were going to go up, it was not true that it had been recently decided and the applicant would have known that.

As we were told in the evidence of Mrs Dalton, that increase had been decided two or three years ago at a National Level and the SDA, through its Board of Management, had decided to phase the increase in. It was duplicitous, at least, to try and use that increase in the way it was done. It was striking at the heart of the SDA's existence to say to members that their remedy was resignation. If the document had said, "Complain to your board of management", one might have said, "Well, okay"; "A member should be entitled to complain about a fee increase".

But it did not do that, it was aimed to strike down the organisation. It was a vindictive document. To be fair to the applicant, I am not sure that he realised what he had done. I am inclined to think that he did not. From his evidence, I am inclined to think that he thought he could have a shot at or make strife for the SDA, but there would be no long term effect.

What he did was worse than that. It gave an opportunity for people who were not friends of the organisation to advantage themselves and that is not the conduct of a person who is dedicated to loyally serving the employer as the law says the applicant should have and as emphasised by this employer as a keystone, of its employment relationship.

The applicant's conduct post-termination, as well, even though I do not place as much weight on the alleged contacts with various people from the Liberal Party, as I do the document, makes it clear that there would be no opportunity for reinstatement.

I just say one more thing about the applicant's conduct concerning reinstatement. The action of the applicant in distributing the circular, was vindictive and I suspect that he has not yet stopped that activity. I say so because of the way this case has been run. I am entitled to draw the conclusion because of the complicated manner that the applicant has chosen to go about this case. He summonsed a large number of witnesses who obviously knew nothing of the questions that would be put to

them. It is open to find that the applicant wanted to put the SDA to as much trouble as possible to defend this matter.

I am not going to make a finding that the action was vexatious, but it is very close to me making such a finding. I content myself with those observations. Orders will issue that the dismissal was not unfair, harsh or oppressive.

Supplementary Reasons for Decision.

At the conclusion of proceedings on 16 July 1997, at which the Commission had delivered Reasons extempore. An application by the respondent for costs was reserved for further argument.

The Commission sat on 17 July 1997, to hear the argument. Mr Fiocco who then appeared in lieu of Mr Nisbet QC, submitted to the Commission that there is power, pursuant to Section 27(1)(c) of the Industrial Relations Act, 1979, for the Commission at its discretion to award costs. He made a claim for costs under three headings. The first for witnesses. Schedule 1 sets out the names of the witnesses and costs claimed in respect of each of them to the sum of \$1,485.00. The second head of claim referred to transcript costs for the first two days of the hearing in the sum of \$242.00. The third claim was for photocopying costs arising from photocopying of documents which were provided to the applicant by way of discovery in the amount of \$409.60.

The applicant told the Commission that he agreed with the application for witness costs. He objected to payments for transcript of hearings and for photocopying of documents provided to him by way of discovery, on the grounds that he was not under the impression or made aware that there would be costs incurred for photocopying of documents that might be supplied to him.

After considering the arguments of the parties, the Commission advised that an order for costs would be made. The witness costs to which consent had been given by the applicant will be paid for those witnesses whose names appear in *Exhibit N4*. Insofar as the transcript costs are concerned, I decline to make an order against the applicant. Insofar as the photocopying is concerned, I will make an order for photocopying that related to discovery at the behest of the applicant in the amount of \$99.20.

It is clear that the Commission may make orders directing unsuccessful applicants to pay various costs and expenses, including witness expenses. The application made by Mr Fiocco is properly made under Section 27(1)(c) of the Industrial Relations Act, 1979. Mr Clarke has acknowledged that he is prepared to accept the obligation to pay a number of the witness costs. The Commission has the power to order one party to pay to another party costs, as long as those costs do not include those for the service of a legal practitioner or any agent. I observe that in dealing with these matters the Act, does not specifically provide schedules for costs. The award of costs in this jurisdiction is not an exact science by any means, but as I understand the commands of the Act I am to use good sense and do what is reasonable in the circumstances. I have applied those broad parameters to my findings.

Minutes of the Orders will now issue.

Appearances: Mr D. Clarke appeared on his own behalf.

Mr P M Nisbet QC and Mr J. Fiocco, of counsel, appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Damian Clarke

and

The Shop, Distributive and Allied Employees'
Association of Western Australia.

No. 97 of 1997.

COMMISSIONER J.F. GREGOR.

11 August 1997.

Order.

HAVING heard Mr D. Clarke on his own behalf and Mr P. M. Nisbet, Q.C. and Mr J.G.M. Fiocco of counsel on behalf of the respondent, the Commission pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

1. THAT the applicant's dismissal was not harsh oppressive or unfair and his application for reinstatement be and is hereby dismissed; and
2. THAT by consent the applicant pay to the respondent within 30 days of the date of this order the following costs in respect of witness attendances for—

Dolly Cran	\$425.00
Nathan Verity	\$410.00
Samantha Ogden	\$150.00
William Loo	\$100.00
Martin Pritchard	\$50.00
3. THAT the applicant pay to the respondent costs in respect of witnesses attendances for Tony Hoh in the sum of \$130.00 and Patricia Dolan in the sum of \$220.00; and
4. THAT the applicant pay the respondents cost of photocopies of discovered documents in the sum of \$99.20 within 30 days of the date of this order; and
5. THAT there be no order as to the respondents costs of the transcript of these proceedings.

(Sgd.) J.F. GREGOR,

[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Nicola Heffernan

and

Energy Equity Corporation Ltd.

No. 819 of 1997.

COMMISSIONER P E SCOTT.

20 August 1997.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings—as edited by the Commissioner)

THE COMMISSIONER: This is an application filed on 30 April, 1997 in which the Applicant alleges that she was unfairly dismissed from her employment as a Corporate Finance Officer with the Respondent. According to the Applicant's evidence, her employment commenced on 20 January 1995 and ceased on 9 April 1997, when she was advised that her position had become redundant and that she was to be provided with a redundancy package.

Exhibit 6 sets out the detail of that redundancy package which includes 1 months' pay in lieu of notice, an additional redundancy payment of 2 weeks pay for each completed year of service, and an ex gratia payment of 1 month's pay. In

addition, the Respondent had made arrangements for an out placement service to be available to the Applicant for a period not exceeding 3 months. The evidence was that the Applicant chose not to make use of the out placement service provided to her.

The Applicant denies that she was made redundant. However, she acknowledged that her work did not fully occupy her at times, that her departure from the Finance and Administration division resulted in that division being reduced in number by one, and that evidence is supported by the evidence of Mr Evans. Further, the duties performed by the Applicant were then undertaken by the Finance Manager and others.

I am satisfied from the evidence of Alan Wayne Evans, the General Manager, Finance and Administration, as to the reasons for reducing the number of staff in the division, relating to cost. I am satisfied from the evidence that the Applicant's position was truly made redundant and I rely on the decision referred to by Mr Bull in *Jones v The Department of Energy and Minerals (60 IR 304)* and the decision of the *Industrial Appeal Court in Gromark Packaging v FMWU (73 WAIG 220)*.

I am satisfied that there is no unfairness demonstrated in the way in which the Respondent selected the Applicant's position for redundancy. I find that it did so for good and sound reasons. The Respondent considered the Applicant's skills and abilities, and her performance and reliability, in deciding what other options might be available for her for a future within the business of the Respondent and it was decided that in those circumstances there was no other position available for her. It has not been demonstrated that the Respondent's selection of the Applicant was unfair.

As to the manner in which the redundancy was implemented, the evidence suggests that within a matter of a day of the decision having been made, the Applicant was advised of her redundancy and she was provided with reasonable benefits in those circumstances. There is no unfairness demonstrated in the manner of implementation of the redundancy.

As to the claim of denial of contractual benefits, the Applicant's contract of employment entitled her to certain share options being exercised. Exhibit 2, which contains the Option Certificate issued to the Applicant, dated effective 28 June 1996, contains the terms and conditions under which that was provided to her. I refer to section 4.B. Exercise of Options, and in particular B.6. which provides that—

"Options may be exercised at any time after the date of issue of the options in the event of—

- (a) ...
- (b) ...
- (c) The Participant, or his position within the Company or any company within the Economic Entity, being made Redundant;
- (d) ...
- (e) ...

provided that in the circumstances referred above the Options (if any) must be exercised within 30 days of the occurrence of the relevant event or such longer period as the Board permits."

B.7 provides

"An options not exercised will automatically lapse on the first to occur of—

- (a) ...
- (b) ...
- (c) The expiry of 30 days, or such longer period as the Board permits; after the participant ceases to be an Executive by reasons of Total and Permanent Disablement, retirement or Redundancy."
- (d) ...
- (e) ..."

This matter is also dealt with in the Contract of Employment between the Applicant and the Respondent signed by the Applicant on 17 January 1997. Clause 7.—Termination of Employment of that document, at the fourth paragraph, provides that—

"All EEC staff owned options shall lapse 30 days from the effective date of termination."

(Exhibit 3)

So, it is quite clear what the circumstances of the offer and the conditions of those options were. The evidence was that the 30 days provided within those conditions have expired and there is no evidence of the Board having permitted a longer period. There is no ability for the Applicant to reserve her rights in a case where the conditions are clearly set out and where the Respondent has a discretion to provide an extension and has chosen not to do so.

I note that the claim is pursuant to s. 29 (1)(b)(ii) of the Industrial Relations Act and that is, in effect, for the enforcement of denied contractual benefits. There is no room for the Commission to consider whether the claimed benefit ought be allowed as a matter of equity or merit. It must be an entitlement pursuant to the contract of employment to enable the Commission to make an order in the Applicant's favour and there is no evidence that the contract is deficient or requires terms to be implied to enable the contract to be given efficacy. On this basis, I find that there is no entitlement to have the availability of the options extended. That was a matter for the Board, not for this Commission.

So, on these bases, I find that the termination of the employment of the Applicant was based on a genuine redundancy and am not satisfied that the termination of employment, either in terms of the reason or the manner of execution, was harsh, oppressive or unfair. I am also satisfied that there is no outstanding contractual benefit as claimed. On that basis, an order dismissing that application shall issue.

Order accordingly.

APPEARANCES: The Applicant on her own behalf
Mr G E Bull on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Nicola Heffernan

and

Energy Equity Corporation Ltd.

No. 819 of 1997.

COMMISSIONER P E SCOTT.

20 August 1997.

Order.

HAVING heard the Applicant on her own on behalf and Mr G E Bull on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this matter be and is hereby dismissed.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Richard Arthur Izard

and

Jay Brock Pty Ltd

T/A Drake-Brockman First National Real Estate.

No. 199 of 1997.

COMMISSIONER J. F. GREGOR.

18 August 1997.

Reasons for Decision.

THE COMMISSIONER : On 3 February 1997, Richard Arthur Izard (the applicant) applied to the Commission for an order pursuant to Section 29(b)(ii) of the *Industrial Relations Act*,

1979, (the Act) on the grounds that he had allegedly been denied contractual benefits under an oral contract of employment.

The Commission was told that the applicant worked with the respondent between January 1996 and 6 December 1996, when the employment relationship came to a conclusion in controversial circumstances which are not the subject of these proceedings. What the applicant claims is outstanding commissions on settled properties pursuant to the contract of employment. He says there was at the time that the employment relationship came to an end payments in respect of ten properties which had not been finalised or alternatively the commissions the applicant had earned on the sale of those properties had been subject to a unilateral deduction from his expenses account. That according, to the applicant, is a breach of Section 12(D) of the Minimum Conditions of Employment Act 1996. The amount claimed to be owing was \$7,737.00. This amount was amended at hearing by adding a claim for a further \$4,500.00. As I understand it, this is an amount which the applicant alleges the respondent deducted without authorisation from his account.

According to Mr Crossley, who appeared for the applicant, the relationship between the parties was the subject of an oral contract and that the applicant would deny that there was any written contract between the parties.

The Commission was told by the applicant that he had been approached to work for the respondent's organisation. He had discussions about commissions and his position in the company. In his examination in chief, he said that he was not to be known as the branch manager because he did not hold a triennial certificate. This evidence he later recanted in cross examination. He told the Commission that he was to be paid on a commission only basis with no retainer. In addition he would receive some assistance with advertising, for instance stationery was supplied by the office as were business cards (*Exhibit C1*). The applicant sought to demonstrate payments that have been made. He denied that he had received consistent information about the status of his accounts. In his examination in chief Mr Crossley took him through the information set out in *Exhibit C2*, which showed the applicant's view of the commissions he should have earned from the sale of 11 properties. He believed that he was entitled to \$7,737.00 which, he claimed, had not been paid. Also in *Exhibit C2* were transaction searches which showed a contribution to expenses of \$4,382.00. The applicant said that he had not seen the account but he thought that the money being deducted for advertising. The complaint was that there had been an automatic deduction and no account had been raised. He did not dispute that he may owe something for advertising. His complaint was with the way that the deduction had been made because he thought it might be contrary to the Truck Act and he objected on that ground.

The Commission was shown in *Exhibit D3*, the terms and conditions of appointment of branch managers. In the document a 'manager' is defined as a person appointed by Jay Brock Pty Ltd to manage the business of the branch office. The document also provides for a promotion allowance which is allowed to a representative for the purpose of advertising and marketing properties listed for sale. It is also mandatory that the manager know and understand the Real Estate and Business Agents Act 1978, the code of conduct for sales representatives and agents and regulations of that Act. The manager has duties and responsibilities described in the contract. In addition to managerial duties a manager is to carry out the function of a sales representative. Importantly, when the manager does so, he is subject to the terms and conditions of appointment of residential sales representatives unless they are varied by the terms and conditions of the managers contract. In this case the matter for debate, that is the quantum deductible for promotional allowance, is a matter which is covered in the managers contract. In the schedule to the managers contract which deals with a definition of branch profit, promotional allowance figure is set at 8.5%. (See example of calculation of branch turnover on page 2 of the Schedule to Exhibit D3).

In addition to sales duties, the manager is to ensure operation within a budget which he has the obligation to prepare. He is also responsible for the image of the company and the prompt introduction and implementation of company policy decided by the board of directors. He has an obligation to

continually search for the right type of representative to be employed by the firm. There are various other provisions concerning the allocation of referral areas for representatives, the listing of referrals and an obligation for staff and field training. The manager is to hold regular weekly meetings with his staff and is to discuss matters which are set out in the contract. These obligations are important in the context of the disputed facts in this case. There are a number of other provisions in the contract which although important have no relevance to the matters under consideration here except that I need to comment upon the provisions of the contract relating to remuneration. Commission earned by the company from sales directly attributed to the efforts of the manager is to be credited in full to the office income but the manager is entitled to a share of branch profit as described in the schedule to the contract.

Exhibit D3 the terms and conditions of appointment of branch managers, provided that where a manager acts as a sales representative he is bound to the provisions of the terms and conditions of appointment of sales representatives. *Exhibit D4* was presented to the Commission and sets out the entitlements of sales representatives in that respect. The document describes the remuneration to be paid to sales representatives, for example, the basic rate of net commission, bonus rates, the sharing of commission within the office and division of the commission with another sales office. Clause 9— Promotional Allowance, provides that during the first three months following appointment, a maximum allowance set out in the schedule to the contract, will apply for all sales and promotional materials of advertising. After that time the allowance the gross commissions earned by representatives from settled sales will apply subject to an upper limit as described in the schedule. The promotional allowance is to include all newspaper advertising, realtor magazine photographs, letterbox leaflets, business cards, promotional and general listing and selling aids and REIWA computer terminal time. The clause also provides that for the purpose of calculation and to allow a degree of tolerance the promotion allowance is aggregated over a three month period on the basis that the expenditure incurred will be related to settled sales for the same three month period. There is no carry over from one quarter to the next and excesses for the quarter are to be debited against the representative's commission entitlements. The clause also provides that in instances where a client is subsidising the advertising and/or signs, the representative will be responsible for collecting the agreed sum prior to being paid commission any shortfall is to be deducted from the representative's share of commission.

These provisions are important in this case, as it is the applicant's assertion that the deduction from his account of monies for promotional activities undertaken by him were made without his authority. His claims he should have received an invoice.

The schedule (*Exhibit D4*) provides method of calculation of promotion allowance. There is to be a maximum \$500.00 for the first three months with the company or 6.5% of gross commissions earned on settled sales to a maximum of \$2,700.00. Thereafter 6.5% of gross commissions produced by each representative on settled sales, aggregated quarterly.

Another document of importance in determining the issues before the Commission is titled Heads of Agreements Meeting Thursday January 13 1996 (*Exhibit D5*). As I understand the evidence, the document are notes of a meeting between David Drake-Brockman, Shaun Pettit and Richard Izard. The document records that the applicant (Izard) accepts the position of sales manager effect of the Tuart Hill office and that the terms of the appointment are to be the standard conditions for a branch manager which incorporates those of representatives in all matters pertaining to company policy and procedures. However, there was a variation in that remuneration was to encompass an achievable managed bonus incentive, applicable for the first six monthly period of the engagement. There was arrangement made for a 10% over-rider bonus commission on all settled sales generated by the Tuart Hill office during the period February to June 1996, but only on the proviso that the office achieves in excess of \$125,000 in gross settled sales commission. There is a further over-rider bonus commission for the period 1 July to 31 December 1996. The document contained a notation that on agreement and acceptance, it was understood that a formal agreement would be

entered into between the respondent and the applicant in the standard format.

There is nothing in the evidence to indicate that this did not occur.

At the request of the Commission during the hearing, the respondent provided a schedule, which set out the detail of the property, vendor or purchaser and the commission received by the applicant on each of the ten properties, when the commission statement was made and when the money was paid into the applicant's loan account. This schedule dealt with the relevant financial transactions for each of the properties which were subject to detailed examination in this case. Of the ten properties after analysis it appears that there is no dispute concerning the commission paid on all but two. That is, the transaction involving 97 Queensway and that concerning the Langford Shop. Later in these reasons I will make findings concerning those two transactions as to whether they should be considered in assessment of the applicant's claim. Before I turn to my findings on witness evidence and analysis of what has been put during this case, I need to briefly discuss law to be applied.

The Commission is empowered to deal with claims of this nature under Section 29(b)(ii) of the Act. In *Simons Case (Reginald Simons v. Business Computers International Pty Ltd 1985 [65 WAIG 2039])* the learned Acting President observed that the jurisdiction which is founded by proceedings brought under Section 29(b)(ii) of the Act is judicial, it is not arbitral or legislative. The Act limits the jurisdiction to ascertaining existing rights by determination of whether or not an employee has been denied a benefit which is not a benefit under an award or order to which the employee is entitled under a contract of service. It is further observed in the Reasons of the learned Acting President that in a situation where there are contracts which are not made under an award or order of the Commission, in most cases in negotiations are not exhaustive of remedies which are to apply for resolution of every conceivable incident. Although the Commission's jurisdiction in the proceedings is judicial there is always room to grant relief which has at its roots the ascertainment of rights and obligations which can be fairly implied as terms of the contract. It is not necessary for an employee to reply upon the express term either oral or written where the law otherwise recognises that there could be room for implication of the term relied upon by the applicant. The same concepts have been discussed at some length by the High Court of Australia in *Byrne v. Australian Airlines* and *Frew v. Australian Airlines 131 ALR 422*. I have no need to comment further on the conclusions that the Justices reached in *Byrne and Frew*, other than to say that the important cases for application here are the decision of the Privy Council in *BP Refinery (Westernport) Pty Ltd v. Hastings Shire Council 1978 52ALJR 20 (BP Westernport Case)* and the High Court in *Codelfa Construction Pty Ltd v. State Rail Authority of New South Wales (1982) 56 ALJR 459*. At the end of the day however, the relevant principles have been refined rather than changed.

I turn now to the witness evidence presented before the Commission. I deal first with the applicant. Hearing this matter was plagued by a presentation to the Commission of detailed examination of a number of transactions involving the applicant when that detail was unnecessary. It was also complicated by the failure of the respondents to first answer the claims of the applicant as is required by an Act, then by failing to abide by directions that the Commission made in an attempt to expedite the hearings. That the respondent chose to be represented through its principal who appeared to be inexperienced in these type of proceedings, further complicated the matter.

However be that as it may, the Commission is required to deal with the issues that have been raised. I heard the evidence of the applicant and he was subject to detailed cross examination by Mr Drake-Brockman who appeared for the respondent. I have to say that if Mr Drake-Brockman had not been distracted by the large volume of irrelevant evidence that had been led from the applicant, his cross examination of the applicant would have been even more effective. I say so because the applicant recanted on his evidence in chief, particularly that concerning whether or not he had entered into written contract with the respondent. The applicant's answers were so varied that I have considerable doubts about the quality of the

evidence I received from him. There was also evidence called on behalf of the applicant from Mr Frank Tenji. I similarly have some difficulties with his evidence, particularly when one examines his conduct together with that of the applicant in dealing with the Langford sale. However that is not a matter before me, but the attitudes expressed by Mr Tenji about his impressions about ethical conduct give rise for concern. One witness was called on behalf of the respondent and that was Mr W. P. Bartlett. He impressed as a thorough and well informed person, concerning the way the real estate industry operates generally and how Drake-Brockman First National Real Estate operates in particular. His evidence in chief was clear and focused particularly concerning his dealings with the applicant and the cross examination did not detract from any of his evidence in chief. The Commission also received a considerable volume of documentary evidence from the respondent. Considering the evidence as a whole, I am satisfied that I should place more weight on that produced by the respondent than I do on that received from the applicant for the reasons I have just discussed. Therefore, where the evidence for the applicant differs from that of the respondent, I favour that of the respondent.

I turn to my analysis of this matter. It is clear from *Simons Case (Supra)* that the Commission's role in the matter such as this is to discover the terms of contract and whether there are any entitlements existing at the end of the contractual relationship due to the applicant and if there are to, by order, give effect to those terms. There are three key areas to decide in this case. The first is whether the terms and conditions of appointment of Branch Managers (*Exhibit D3*) and the terms and conditions of appointment of Sales Representatives (*Exhibit D4*) were made attachments to the contract of employment of the applicant. Secondly, whether those contracts provided that a promotional allowance be made so that a deduction would be made from gross commissions. Thirdly, whether if such deductions were made, the respondent was entitled under the contract of employment to deduct those from the earnings of the applicant without giving him an invoice.

Before I deal with these matters I need to deal with the outstanding issues concerning the transactions relating to 96 Queensway and to the Langford Shop.

It is the evidence of the respondent which I accept, that the transactions relating to 96 Queensway are at the date of the hearing and at the time of writing of these reasons on-going due to a dispute with another agent who claims to have a monetary interest in the dealing. There is an argument between the parties concerning the Langford Shop. The applicant says that he completed the sale and that he was entitled to 50% of the commission through an agreement that had been made between another agent and himself. According to the respondent, whatever documentation the applicant had put together did not come to fruition in legal sense and another set of documentation was prepared which did not involve him. Mr Tenji told the Commission in his evidence that he wanted to purchase the property so he chose the applicant to represent him. He received a letter from a financial institution and it slowed down the procedures for a loan which caused the bank to ask for a further deposit. Mr Tenji was of the view that the deal was simply a rewrite of an agreement at \$60,000.00 instead of \$59,000.00. According to Mr Tenji, Shaun Pettit, another agent, copied the original document down line for line into a new agreement. Mr Tenji then took the document off to negotiate with the purchaser. The other representative had said to Mr Tenji that he did not want to see the applicant cut out of what he was due because of the rewriting of the agreement Mr Tenji's opinion was that he negotiated a new price, it was not a new agreement and that he regarded the applicant as the selling representative. Mr Drake-Brockman cross-examined Mr Tenji about the efficacy of the transaction with the applicant acting as his agent while he was employed by same firm. His conduct in this case had led to them parting company. According to the evidence of Mr Bartlett the matter is simple. The Langford Shopping Centre was written up by the applicant, subsequently that deal fell over due to finance not being arranged by due date and the deposit was not paid. Mr Tenji wrote a contract with another representative subsequently the price went up and he actually had to arrange further finances. Therefore, the deal with the applicant did definitely fall over. The new deal was at a higher price and with different

financing. Having considered the evidence that has been presented to the Commission, I find that the Langford Shopping Centre deal was not completed by the applicant but by another agent and he has no claim to the commission arising from that sale.

I now turn to deal with the the contractual relationship. It is clear that there was a meeting between the applicant, David Drake-Brockman and Shaun Pettit. This is evidenced by the heads of the agreement meeting (*Exhibit D5*). I accept that the notes of the meeting give evidence of an intention to enter into a contract of employment. Part of that contract was that the standard conditions for branch manager, incorporating those of representatives would be applicable to the employment relationship. There were colateral agreements concerning over-rider bonus commissions. From the applicant's own evidence in cross examination and I have no doubt that he knew that standard terms and conditions of appointment applied to his contract. He was clearly the branch manager and he performed the duties which the contract requires of a branch manager. Insofar as promotional allowance is concerned, the contract for a branch manager adopts the terms and conditions of appointment for representatives. In the schedule to those terms and conditions are provisions which describe that the promotional allowance is to be assessed on the basis of a maximum of \$500.00 for the first three months with the company or 6.5% of the gross commissions earned on sales settled subject to a maximum of \$2,700.00. Thereafter the allowance was to be 6.5% of gross commissions produced by each representative on settled sales aggregated quarterly.

There may have been discussions concerning a different percentage of promotional allowance but I am unable to conclude whether they came to fruition or became part of the contract of employment. The question remains whether the respondent was in entitled to deduct the amounts that it did from the commission earnings of the applicant. In this respect, Clause 9— Promotional Allowance of the conditions of appointment of sales representatives, which are embodied in the terms and conditions of appointment of branch managers for the purpose of the applicant's contract of service, provide that for the purpose of calculation the promotional allowance be aggregated over a three month period. The expenditure incurred will be related to settled sales for the same period, there is to be no carry over from one quarter to the next and any excess will be debited against the representatives commission entitlements. Later in the clause, in dealing with subsidisation of advertising and/or signs, there is a provision which enables the respondent to deduct any shortfall from the representative's share of commission. It is the clear intention of a contract of employment that promotional expenses can be deducted from the commissions. There is no requirement that the respondent invoice the employee, the deductions can be made automatically. The respondent was not in breach of the contract when it made the deductions that it did from the applicant's account by debiting his loan account and crediting the account created for promotion.

I cannot see that any of the monies that the applicant claims owing to him are owed. It appears to be that the deductions that have been made are at the correct levels as far as one can tell from the information submitted to the Commission and that they were made consonant with the power under the applicant's contract of employment to make such deductions.

For the reasons I have set out above, this application will be dismissed.

Appearances: Mr T. Crossley appeared on behalf of the applicant.

Mr D. Drake-Brockman appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Richard Arthur Izard
and

Jay Brock Pty Ltd
T/A Drake-Brockman First National Real Estate.

No. 199 of 1997.

COMMISSIONER J. F. GREGOR.

18 August 1997.

Order.

HAVING heard Mr T. Crossley on behalf of the applicant and Mr D. Drake-Brockman on behalf of the respondent, the Commission pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby dismissed.

(Sgd.) J.F. GREGOR,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Eleanor Angela Keane
and

Lomba Pty Ltd T/A Ian George & Co.

No. 177 of 1997.

COMMISSIONER J.F. GREGOR.

5 September 1997.

Reasons for Decision.

On the 29 January 1997 Eleanor Angela Keane (the applicant) applied to the Commission for an order pursuant to Section 29 of the *Industrial Relations Act, 1979*, on the grounds that the termination of a contract of employment by Lomba Pty Ltd T/A Ian George & Co (the respondent) had been harsh oppressive or unfair and that at the conclusion of the contract of the employment the applicant was entitled to benefits under the contract which had not been paid. The application claims reinstatement in satisfaction of the claim of unfair dismissal and that benefits of \$7,532.06 for pro-rata annual leave and \$3,600.00 for commission are unpaid. It also gives notice that there will be further claims concerning superannuation for the period commencing 1 July 1995, payment for sick leave and what is described as benefits to be paid to the applicant.

Later the Commission was advised in correspondence by Mr Clohessy, who appeared for the applicant, that the claim can be dealt with in two broad headings. The first is that relating to contractual benefits and second that relating to an unfair dismissal. By a letter filed in the Commission on 14 April 1997, Mr Clohessy advised there were 7 items of claim under the heading of contractual benefits. The first was for superannuation in the sum of \$5,403.35. Second, underpayment of salary increase not paid in the sum of \$666.20. Third, an amount of \$6,864.66. Under the fourth item of claim, \$1,201.32 for 17½% leave loading. Fifth, \$4,478.18 as pay in lieu of notice, making a grand total of \$18,613.71. The sixth item was for an indemnity as to P.A.Y.E. obligations. The seventh, interest at the rate of 8% on monthly rests on debts due from 10 January 1997 pursuant to Section 32 of Supreme Court Act. Under the head of claim concerning unfair dismissal, compensation in the sum of \$29,746.86 was sought, making a grand total of \$48,360.57.

In other correspondence from Mr Clohessy received by the Commission, the claims were set out in a different form, for instance, in document filed prior to the amended claim which was received on 14 April 1997, there were admissions that the matters concerning annual leave were within the jurisdiction

of the Industrial Magistrate. There was also an admission that the superannuation claim is under the jurisdiction of the Australian Taxation Office. These various advices confused a clear understanding of the claim because there are different amounts claimed under some of the same items of claim. There was also an admission that the applicant did not object to the respondents offset of \$1,658.75.

At the time the hearing commenced it is apposite to note that the exact detail of the claim was unknown. Mr Clohessy was of the opinion that the documents that had been submitted were not an amended claim at all, they were in fact details of the original claim which had been extracted to allow better understanding of it. Objection was taken by Mr Bradford, of Counsel, who appeared for the respondent to the claim dealing with superannuation as being a matter that is more properly within the jurisdiction of the Australian Taxation Office. He also questioned a so called Directors indemnity as to P.A.Y.E. obligations. Mr Bradford also submitted that there was no power to make awards for interest payments under Section 32 of the Supreme Court Act, which could not be said the cloth this Commission with jurisdiction. However, the matter proceeded as best it could with the identification of the matters in claim as they were recorded on pages 14 through 19 of the transcript.

The applicant in these proceedings was employed by the respondent under the terms of a service agreement made between them on 1 July 1994. The relationship was unusual in that it was multifaceted. Under the service agreement the respondent agreed to appoint the applicant as the person in bona fide in control of Ian George & Co. In that role she would be referred to as the manager. Part of what the applicant bought to the business was an agent's license pursuant to the *Real Estate and Business Agents Act* (REBA Act) and the service agreement confirms that. Lomba Pty Ltd which trades as Ian George & Co, the respondent in these proceedings, agreed to employ the applicant for the purpose of operating and managing their business and to serve the company as manager until the agreement was terminated following one months written notice by either party. On the face of it there is no provision for payment in lieu of notice. The applicant as the manager, was the person in bona fide control of the day to day real estate and business activities of the company. She was to give her full time to the business and all material was to be available at the licensed premises. There was an agreement to pay the manager the sum of \$500.00. Commissions earned by the manager on sale of property would be split on a 50/50 basis between the applicant and the respondent. There was another level to the relationship in that the applicant was appointed as a director of Lomba Pty Ltd and was a necessary signatory to the trust account and trading accounts of the respondent. The applicant was to be indemnified by Lomba Pty Ltd against all claims during her term of service in a capacity as a director of the company.

The applicant told the Commission in her evidence in chief that she was employed by the company from 1 July 1994, in accordance with the service agreement. That relationship continued until 17 December 1996, when she received a registered letter terminating her services. The letter (formal parts omitted) is incorporated here under—

"Following the disappointing loss recorded in 1995/96 trading year it has become evident that the viability of the Company has become increasingly threatened by the burden of operating costs in a difficult market.

It has therefore been decided to cease trading as Ian George & Co as from the 31st December 1996 and to merge the business of the company with that of Hammond and Co. The new merged entity will trade under the name of Hammond Salter Properties with Chris Hammond as Licensee.

This decision has not been made lightly or without considerable investigation of possible alternatives.

As a consequence of the above it is with regret that the Directors of Lomba Pty Ltd now give you one month's notice of termination of employment, in accordance with clause 4 of your Service Agreement with the Company, dated 1 July 1994.

I thank you for your services to the Company over the past two and a half years in your position as Licensee."

The Commission was told that on 17 December 1996, the applicant had not been at the office, she had been on sick leave and she had produced a medical certificate to support a claim for sick leave. Whether she was entitled to payment for sick leave during that period is a matter of controversy. The respondents position was that the applicant was not entitled to accrued sick leave and if she was on sick leave it was above and beyond any sick leave to which she was entitled to under her contract or any statute. Evidence was given that over the period in which the applicant was employed her salary varied as she took up different responsibilities. It increased when the responsibilities increased and decreased as they were varied. For instance when she ceased doing property management her salary dropped. The applicant said that there had been no discussion about the potential for the termination of her services. She had been absent from 2 December 1996 through until about 3 January 1997. She had been hospitalised for two days and then was on sick leave for the rest of the time. The applicant gave evidence concerning guarantees she alleged were given to her in her role as Director concerning P.A.Y.E. obligations. There were also issues concerning her superannuation which I do not intend to recite other than acknowledge that the applicant says they were monies to which she was entitled either by indemnity or payment.

The applicant says she was dismissed before any discussion took place with her. She was left in a situation where she was virtually out without any consultation. She should at least have been offered the opportunity to continue in sales position. As a Director the respondent's intentions should have been discussed with her. She thought she should have been consulted before the decision had been made to cease trading as Ian George & Co and to merge the business of a company with that of Hammond & Co. She also advised the Commission that in view of the letter she had received it was her view that as of 31 December 1996, she was no longer employed. Because of that she felt free to register a business in her own name and during the month of December 1996 set about doing so. In any event she thought she was free to trade under her own license from 1 January 1997.

This impression gave rise to some concerns to which the respondent drew attention during the hearing concerning the status of the applicant as an employee during December 1996 and January 1997. The applicant was subject to intensive cross examination by Mr Bradford. In this recitation I have no need to deal with that now as I will canvas the issues raised during my analysis suffice to say that there were many responses by the applicant contrary to those given during her evidence in chief. Mr Bradford rigorously cross examined the applicant about her responsibilities during the time of her employment particularly in the context that as a Director and a triennial certificate holder she would have been privy to information about the trading situation of the respondent. However the applicant denied that she had any extensive knowledge, claiming that another Director of respondent denied her knowledge so she was not in all senses aware of the financial situation of the respondent. It was her view that the down turn in the financial situation could have been reversed by adjustments to skill mix of persons who were employed. The respondent could also have afforded staff which were better placed to do the work than those who were employed. The applicant opined that the respondent's financial situation was because of bad management.

The applicant was also subject to detailed cross examination concerning her illness while on sick leave. It appears that she was in hospital for two days late in November 1996 and she obtained a medical certificate on 2 December 1996. The applicant told the Commission that the medical certificate did not nominate any illness, it merely said that she was unable to work for a period of one month. In her opinion the illness and the absence was for stress. Her doctor had confirmed this. She accepted his advice that she should not go to work was correct and she did not. There was some controversy between the parties about the applicant's conduct after January 1997. In evidence she indicated she may have gone into the respondents office on the 3 January and on 7 January she may have met with Mr Salter to discuss her final pay which was paid to 17 January. The applicant said she was of the view that her visits to the office could not be considered as her working because she thought her services were terminated from 31

December. She did concede that on 10 January she was given two weeks pay which she accepted. The applicant was also cross examined in detail concerning an allegation that during this period she entered into a business arrangement to sell a property for the sum of \$850,000 on which she would have earned commission of \$15,000. There was detailed cross examination as to the efficacy of her conduct and the claim that if the applicant failed to share that commission with the respondent whether there was a breach of her service agreement.

For the respondent the Commission heard evidence from Ian Salter. He told the Commission that he was a Director of the respondent which had traded as Ian George & Co since May 1993. He related that he had employed the applicant in July 1994 and entered into a service agreement with her. There was no other written agreement but from time to time there were arrangements for her to do other work. For instance handling of the property management division. This was for a specific time and came to an end by mutual agreement. She was never employed by the respondent as a sales consultant, but in terms of her service agreement she did have the right to sell. But when she did, there were consequences flowing from that right which related to the sharing of commission on the 50% basis.

Mr Salter gave evidence concerning the financial position of the respondent. He said that during 1996, the direction the company was headed in the financially was downwards. He had investigated a number of different scenarios how he could cut overhead costs and eventually considered that amalgamation with another real estate agent was the answer. In 1996 he had discussions with Hammond & Co but those discussions did not come to fruition. He later revisited the idea and decided that the best way to handle the situation was by of merger. His evidence was that the employees in the company of which the applicant was one, knew about those considerations and in due course a partnership was entered into between Lomba Pty Ltd and Hammond & Co. Because of the merger, the need for the applicant to hold a license became redundant as Mr Hammond held one. On solely financial grounds, it was decided that it was not sensible to pay her \$500.00 a week the use of her license. This led to the letter of 17 December 1997 which gave notice to the applicant. Mr Salter referred to the letter and said that he was at pains to ensure that the applicant knew exactly why her contract of employment was bought to an end. He had deliberately tried to make the point in the third paragraph of the letter that it had not been easy decision to make. Mr Salter was emphatic that the applicant had never been employed as a sales person or sales consultant but she did have the right to sell as had any person who had a sales certificate. As a Director of Lomba Pty Ltd, she was entitled to know the financial position of the company and was in fact required as a part of her duties as licensee and manager in bona fide control to know what the financial position was. According to Mr Salter she was perfectly able to ascertain the financial position because the books were kept in an unlocked cupboard next to her desk.

Mr Salter related to the Commission his understanding of the situation when the applicant received a medical certificate late in November 1996 indicating she was unfit for work for a period of 4 weeks. He had discussed the situation with his accountant, John Fraser, when he was trying to work out the applicant's entitlement to sick leave. He had no reason to doubt the medical certificate and he knew the reason for the time off was for stress. This he found out from another member of staff at least a week after the certificate had been issued. He had never noticed prior to the applicant going on sick leave anything stressful about her approach to her work but to his knowledge the applicant was on sick leave and not working throughout the month of December 1996. He told the Commission that he subsequently discovered that she conducted negotiations on a sale of a property at 2B, 158 Mill Point Road, South Perth, during that month. Mr Salter's evidence was that he was understood he was required to give the applicant one month's notice under her service agreement and he did so on 17 December 1996. As a result he was obligated to pay her for another month and that is what he did. He gave evidence that on 10 January 1997, that the applicant accepted one week's pay and plus another week in lieu of notice so that she was paid up until 17 January 1997, which meant that the respondents obligation had been discharged. Insofar as the merger was

concerned, it was agreed between the respondent and the other party to the merger that it would take place on 1 January 1997 and he had given the applicant notice immediately that decision was made.

The Commission was told by Mr Salter that on 7 January 1997, the applicant came to the office and they spoke together. He had left on her desk his calculation of her sick pay entitlements and with a request to discuss the matter. She never raised any objection to being given notice under the contract of employment. Mr Salter also gave evidence concerning the use of mobile phones supplied by the respondent. He said that there were six in use in the company. He discovered that the applicant had misused her mobile phone during her sick leave period. In fact the amount of expenditure on her mobile phone was 40% of the entire bill. He thought that was unacceptable and he cancelled the service. Mr Salter said that in the time the applicant worked for the respondent, she was never entitled to keep all commission for herself on a sales that were made. This question was at large in relation to the applicant's conduct in the sale of the property at 2B, 158 Mill Point Road, South Perth, during her period of sick leave. Prior to that event, he had always found the applicant to be honest and reliable. He admitted that she was not invited to director's meetings. He gave evidence concerning her refusal to sign a certificate necessary under the REBA Act. She had declined to sign it because in her opinion the financial situation of the company was such that she could not sign a statutory declaration that it was in a position to pay its accounts.

During cross examination Mr Clohessy questioned Mr Salter about the signing of a letter concerning the amount of salary that the applicant earned. He said that he had done so to assist her to get finance. He rejected that the information that he attested to in the letter was incorrect. He said that he authorised payments to her on 10 January because after talking it over with his accountant, it appeared that the applicant had left the employment and that in fairness her payments ought to be made up until the time of the end of the notice period. He acknowledged that she was on sick leave at the time he gave her notice but she had used what he considered to be her entitlement for sick leave. He was of the view that it was arguable that what he had paid her was annual leave. As for the mobile phone bill, Mr Salter said that the applicant's was the highest in the firm, that he cancelled the service on 2 January related to her use of the phone to call Massachusetts in the USA and not to her dismissal. He mentioned that he had seen the applicant on a number of occasions during her sick leave in the Windsor Hotel. In re-examination he told his counsel Mr Bradford that the applicant would have been entitled to assume that her services as Licensee would not be required after 31 December but she was still entitled to sell property after that date for her employer.

At the time of the dismissal the respondent was required to discharge the obligations placed upon it by Section 23AA of the Act. By the Act the respondent is required to establish that there is ground or grounds on which the Commission could find that the dismissal of the applicant was justified. In *Hooper v. Lou Lou Pty Ltd T/A Price Attack* (77 WAIG 503), I noted, quoting the writing of Senior Commissioner Fielding in *Melissa Jaggard v. Tranby Pty Ltd trading as The Court Hotel* (76 WAIG 4720) case that the Act only requires that the employer prove on the balance of probabilities, the possible existence of justifiable grounds for dismissal, not the actual existence. It is clear from what the Commission has been told in this case that the trading loss suffered by the respondent threatened the viability of the concern and as a solution to that crisis the respondent decided to merge with another real estate company in an endeavour to reduce administrative costs. This merger took place with Hammond and Co to form a partnership trading as Hammer Salter Properties. As a result of the merger the applicant's services were no longer required particularly to the extent that she was the holder of a triennial certificate because Chris Hammond, the principle of Hammond and Co held a similar license. It was decided that to save \$500.00 a week that the respondent was paying to the applicant that her services as a license holder were no longer required. This meant that on 17 December 1997, the respondent wrote to the applicant and gave her one month's notice in accordance with her service agreement (*Exhibit C2*). The respondent had a genuine need to reduce operating costs of the

new trading entity. There were on the balance of probabilities justifiable grounds for the dismissal and the tests that are established in the writing of the Senior Commissioner Fielding in *Jaggard's* case (*supra*) have been met.

Having made this preliminary finding the question is whether the respondent has nevertheless acted harshly, unfairly or oppressively in its dismissal of the applicant. It is for the applicant to establish that the dismissal was in all the circumstances unfair. The test for ascertaining whether a dismissal is harsh, oppressive or unfair is that outlined by the Industrial Appeal Court in *Undercliff Nursing Home v. Federated Miscellaneous Workers Union of Australia* (1985) 65 WAIG 385. The question to be answered is whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the Act may still be unfair if, for example, it is effected in a manner which is unfair but if the employment has been terminated in a manner which is procedurally irregular that will not of itself necessarily mean the dismissal is unfair (*see Shire of Esperance v. Mouritz* (1991) 71 WAIG 891 and also *Byrne v. Australian Airlines* (1995) 65 IR 32). In *Shire of Esperance v. Mouritz*, Kennedy J also observed that whether an employer in bringing about a dismissal adopted procedures which were fair to the employee, is but an element in determining whether the dismissal was harsh or unjust.

Before I go to my analysis of this matter, I need to make some findings on witness credit. I had the opportunity of seeing the witnesses give their evidence. Of the applicant I say that I have considerable concern as to the veracity of her evidence. She was evasive under cross examination. Her answers were confusing which was surprising in a person who presented as one who is very much aware of her rights and responsibilities. I was concerned that in her cross examination there appeared to be attempts at obfuscation. All in all I found her to be an unsatisfactory witness and have considerable doubts about the weight I should place upon her evidence. Mr Salter gave evidence for the respondent. I have no reason to doubt the truth of what he told the Commission. Even though that some of his admissions as to his conduct as an employer regarding payment of tax and superannuation gave rise for concern I conclude that his evidence was nevertheless truthful. It is my view that there are substantial difficulties with the evidence of the applicant, where it varies from that I have received from the respondent, I favour that of the respondent.

What I have to decide is whether the applicant has discharged the onus that rests upon her on tests set out in the *Undercliff Nursing Home* case and has proved that the dismissal was in all the circumstances unfair. What has been put on her behalf is that the dismissal was unfair because she was not informed about the financial difficulties of the respondent. I find that very difficult to accept. I observe too, that the applicant's appointment as a Director was not a legal obligation flowing from the service agreement or requirement under the REBA Act. It was an appointment for the purpose of her employer satisfying criteria to become a member of the Real Estate Institute of Western Australia. It is clear from her cross examination that the applicant had knowledge about the financial affairs of the her employer. She admitted she looked at the books on a number of occasions, she knew what sales were coming in, she knew the status of the rent roll and she was not prevented by the bookkeeper from viewing the books. The books were kept in an unlocked cabinet close to her desk. She was aware that the sales were down and costs were higher. She knew that there were cash flow problems and she was aware of liabilities, particularly those for tax and superannuation and the like. She clearly knew that the financial state of her employer, if not parlous, was one which was causing considerable concern.

Mr Clohessy argued that one of the reasons for the unfairness from the applicant's point of view was that she was dismissed while on sick leave. I have some difficulty with this argument. I am not sure at all that the applicant was on sick leave in accordance with an accrued entitlement during December 1996. Mr Clohessy referred me to *Reynolds v. Swift and Moore Pty Ltd* (74 WAIG 861), which is authority for the proposition that not all terminations on sick leave would be held to be invalid. *Reynold's* Case may be distinguishable because if a person is on sick leave for which there is no

accrued entitlement it might be a completely different question as to whether the person can be terminated while on sick leave for which there is an accrued entitlement. It seems to me that the best view of what occurred in this case is that the applicant was on leave supported by a medical certificate which did not specify the nature of her illness. The employer may have opted not to pay her, it did not, it continued payments. I am not at all convinced that those payments were on account of sick leave at all. They could well have been payments made ex-gratia in a sense. The respondent has not claimed that the payments were made in respect of annual leave, which is a matter to which I will return later.

My view of the dismissal is that here was situation where the applicant was given notice of termination. That notice was received by her during a period in which she may have been on sick leave. She certainly was not obligated to attend work during the first part of the notice because she had a medical certificate, which by implication the respondent accepted, which would take her through until 2 January 1997. But it is clear that she was doing work during the period she was absent. On her own admission, she conducted business activities which led to the sale of a valuable property. She tried to convince the Commission that it should not take notice of this activity because the settlement date on the property was at a time later than the notice period expired. It is clear from her evidence that she was conducting business affairs relating to that sale early in January and I do not accept her protestations that the sale was something that she had embarked upon while she no longer had obligations to the respondent. The applicant has adopted the position that because of the letter she received on 17 December which mentioned that there would be a merger as of 31 December 1996, that after that date she had no longer any obligations to her employer. That position is completely at odds with her attending the office of the respondent on 3 January and 7 January 1997 and accepting salary payments through until 17 January 1997. That she accepted those payments must be taken to mean that she understood that the notice period which was notified to her in the letter of 17 December 1996, that is one month in accordance with the provisions of her service agreement was a bona fide notice period. She should have realised she had obligations to the respondent until 17 January 1997 I believe that notwithstanding her evidence to the contrary that she did have those obligations. She knew she had those obligations. It was for purposes, which may have something to do with a sharing of the commission on the sale of the property at 2B, 158 Mill Point Road, South Perth, that she was not be frank about her activities.

As I have said earlier I have substantial doubts about the veracity of the evidence of the applicant. I find on the balance of probabilities that there was no mistake on her part concerning the meaning of one month's notice. It was given to her on 17 December 1996. She knew it was to expire on 17 January 1997 or thereabouts. She was prepared to accept payment until that time and in fact money was paid into her account. I cannot see that there has been unfairness on behalf of the respondent in this case and the applicants claim that she has been harshly, oppressively and unfairly dealt with in this matter will be dismissed.

I now turn to deal with the claim for entitlements. During the hearing I advised the parties that the Commission had doubts about its jurisdiction concerning both superannuation and the claim that it could award interest under Section 32 of the Supreme Court Act. I confirm what I said in transcript in respect of those two matters. Concerning item 2 of the claims, it has been agreed by the parties that the amount of \$2,084.40 less advances on commission of \$1,658.75 results in the applicant being owed by the respondent the sum of \$425.65. As for item 3 it seems that it was agreed by the parties and acknowledged in Mr Clohessy's letter of 20 March 1997, that the Minimum Conditions Employment Act applies where contract of employment is silent. It appears that in July 1996, the applicant had 5 days sick leave to which the respondent agreed despite the fact that she had no pro-rata entitlement as at that date. When she went on sick leave in December 1996, she had still not accrued sufficient sick leave to cover the 5 days taken in July 1996. The respondent, even though there appears to be no entitlement, continued to pay her during the time she was on sick leave, so called, but the fact is she had no sick leave entitlement at that time. However the applicant was not on

annual leave at the time. She made no application for it and I am drawn to the conclusion that in the face of there being no accrued sick leave entitlement the respondent had opted to continue her payments as if she were working. That does not explain the status of applicant's right to annual leave entitlements as at 17 January 1997. It appears that it is likely that she was entitled to annual leave at the completion of her contract of employment but this Commission has no power to make an order for annual leave in the face of the Minimum Conditions of Employment Act, a matter which is conceded by Mr Clohessy in his letter of 20 March 1997. As for the question of annual leave loading, I find that there is no contractual obligation under the service agreement for the respondent to make payments. I have no need to turn my mind to whether any calculation of annual leave entitlements should include commission, as there is no basic entitlement here as I understand it.

I have considered the reasons of Sharkey P in *Bombak v. Didco Pty Ltd T/A Nik Vargo Real Estate (1995) (75 WAIG 2314)*. In view of my finding concerning annual leave, I do not need to comment on the matter other than as obiter to say that it seems to me that under Clause 7 of the Service Agreement, there is no provision for the applicant to be paid anything other than the fixed rate of \$500.00 per week.

Orders dismissing the application will now issue.

Appearances: Mr R Clohessy appeared on behalf of the applicant.

Mr K Bradford, of Counsel, and with him Mr J Barrett of Counsel, appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Eleanor Angela Keane

and

Lomba Pty Ltd T/A Ian George & Co.

No. 177 of 1997.

COMMISSIONER J F GREGOR.

5 September 1997.

Order:

Having heard Mr R Clohessy on behalf of the first named party and Mr K Bradford on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the application be and is hereby dismissed.

(Sgd.) J.F. GREGOR,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Angela Parry-Marshall

and

Enterprise Clubs of Australia Pty Ltd.

No. 1628 of 1996.

3 September 1997.

Reasons for Decision.

COMMISSIONER C.B. PARKS: The respondent in this matter is a commercial enterprise which derives its income from the fees paid by other businesses that are enrolled to participate as members of a business networking operation. The Directors of the respondent deal with matters of management and administration allocated to them, and, prior to the engagement

of Ms Parry-Marshall as the Development Officer, that also included marketing and the recruitment of new members.

Early in 1996 the Board of Management of the respondent decided to engage an employee to market the networking concept and recruit business related members, thereby relieving the respondent's directors of performing those tasks. The employment position created was titled Development Officer and a personnel recruitment agency recommended the applicant and another as suitable candidates for the position. Initially Ms Parry-Marshall was not selected by the respondent but was later engaged following upon the resignation of the other candidate after a few weeks of employment. Ms Parry-Marshall commenced that employment on 1 April 1996.

On the afternoon of 30 October 1996 Ms Parry-Marshall transmitted to the respondent, by facsimile, a letter of the same date (exhibit O8) wherein she referred to matters regarding changes to her contract of employment and also expressed the belief that "... (her) resignation has been forced". That letter did not expressly state that the applicant had resigned her employment however, the reply of the respondent treated the letter as her resignation and Ms Parry-Marshall has since proceeded on the basis that such was so, but that it was forced upon her by the respondent altering her contract of employment effective 1 November 1996. On 8 November 1996 the applicant filed her application in the Registry of the Commission alleging that she had been unfairly dismissed from her employment and asks that the respondent be ordered to pay her the equivalent of 10 weeks salary as compensation.

Material to the decision of the applicant to resign was a discussion held with her at a meeting on 28 October 1996, which involved Mr P.J. Jones the Managing Director for, and Mr J.R. Loaring a Director of, the respondent. At that meeting it was put to Ms Parry-Marshall that she be remunerated on a basis different to that originally agreed and being applied to her at that time. In addition, the applicant was provided with a document reflecting a written comparison of her current basis of remuneration and that of the alternative basis which was noted as being effective 1 November 1996. Ms Parry-Marshall expressed concern with the alternative basis of remuneration and sought, and was granted, the opportunity to discuss the alternative basis of remuneration with her husband before making a decision thereon. On the morning of 30 October 1996 Ms Parry-Marshall caused a letter of the same date to be transmitted to Mr Jones, by facsimile, wherein she referred to the alternative remuneration basis and in addition sought clarification in relation to listed cost items, together with the clarification of future rights to superannuation and leave benefits. Mr Jones responded to the applicant by telephone regarding the matters raised, and according to him, he addressed the majority of matters and also indicated that the remainder would be dealt with in writing. Written advice to the applicant regarding these matters did not eventuate because of her later facsimile letter of resignation on that same day (exhibit O8).

According to the applicant, at the meeting on 28 October 1996 the alternative basis of remuneration explained to her was put on the basis that it was not negotiable, it was a fait accompli, and therefore come 1 November 1996 such would be implemented by the respondent. Neither Mr Jones, nor Mr Loaring, conceded that the remuneration alternative was put to Ms Parry-Marshall as being "not negotiable" but their testimony otherwise reveals that they conveyed to Ms Parry-Marshall the message that the respondent could not afford to continue remunerating her on the then current basis and there had to be change. According to Mr Jones, notwithstanding the respondent's stance on the remuneration alternative, it was not immutable, nor was the effective date of 1 November 1996 which had become imminent because it had been selected with the intention of meeting with the applicant circa one week earlier, but the proposed meeting had been delayed to meet her needs. Mr Loaring, on the other hand, expressed the opinion that the short time between the meeting and 1 November 1996 provided adequate time for the applicant to consider her position and for an alternative basis of remuneration to be implemented. He viewed it as being of little consequence.

Between the meeting of 28 October 1996 and the resignation of Ms Parry-Marshall on the afternoon of 30 October 1996, Ms Parry-Marshall conversed with Mr Jones by telephone and

the subject matter of a dismissal by the respondent, together with the alternative of her resignation from employment, were raised. Each has a different recollection of the context in which the subject of dismissal and resignation were mentioned however I am satisfied that both were initially raised by the applicant and that Mr Jones responded with the indication that although the respondent required change it was not seeking an end to the employment of Ms Parry-Marshall. Mr Jones has told the Commission that management of the respondent was aware that it could not unilaterally alter the remuneration basis of the applicant and therefore it was known that no change could be implemented on 1 November 1996 without her approval. However, given that at the meeting held on 28 October 1996 Ms Parry-Marshall had indicated she was not attracted to the remuneration basis put to her, and that, neither then nor in the telephone conversations which followed did management give any hint that it may be open to negotiation, I therefore conclude that management acted with the calculated purpose of causing the applicant to believe she was faced with an ultimatum, an ultimatum designed to pressure her through the apparent requirement to make a quick decision. The respondent did not deal with the applicant in a reasonable way however the matter to be decided is whether the respondent "forced" the resignation of Ms Parry-Marshall. I am satisfied that in the legal sense the respondent did not.

The law is quite clear, the respondent could not legally make a unilateral change to the remuneration basis of the applicant from 1 November 1996, or at any other date. Were the respondent to have actually applied such a change, effective 1 November 1996, that conduct would have represented a repudiation of the existing contract of employment and would have entitled Ms Parry-Marshall to immediately cease her employment, and that would have been viewed as a dismissal at the hand of the respondent. Alternatively, in the same circumstance Ms Parry-Marshall could have elected to continue in her employment which would not have meant that she had acquiesced to a change, as she suggested would be the case, provided that she gave notice to the respondent that she continued under protest. Had this course been followed it would have been open to the applicant to pursue the matter further with the respondent, or alternatively, pursue any underpayment of remuneration (assessed according to the terms of her contract of employment) by way of an application to this Commission. What Ms Parry-Marshall was faced with, if taken at its worst, can be viewed as notice from the respondent of an intention to act but that does not constitute an actual act of repudiation. Come 1 November 1996 the respondent may not have acted to repudiate the contract, but further, had the respondent done so, the nature of prejudice to the applicant was capable of remedy.

The respondent did not put Ms Parry-Marshall in a position where she had no reasonable alternative to resignation and consequently the respondent did not force her to resign. The applicant unfortunately took the ill-informed decision to resign, there was no effective dismissal by the respondent and therefore her application to the Commission is not competent and will be dismissed.

Appearances: Ms F. Ord (of Counsel) appeared on behalf of the applicant

Mr D. Vilensky (of Counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Angela Parry-Marshall

and

Enterprise Clubs of Australia Pty Ltd.

No. 1628 of 1996.

3 September 1997.

Order.

HAVING heard Ms F. Ord (of Counsel) on behalf of the Applicant and Mr D. Vilensky (of Counsel) on behalf of the

Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C. B. PARKS,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Carla Ortuzar

and

Newcrest Mining Ltd.

No. 265 of 1997.

11 August 1997.

Reasons for Decision.

SENIOR COMMISSIONER: The Applicant was employed by the Respondent at its Telfer mine from 1 November 1995 as a laboratory technician. She was employed under a written contract which required that she “at all times” comply with “all safety requirements” of the Respondent, a breach of which could render her liable for dismissal. It is common ground that amongst those requirements are the obligations imposed by the Respondent’s regulations relating to the tagging out of equipment under repair. Those requirements are set out in the Respondent’s Danger Tag and Out of Service Tag Regulations. They provide for two tags—one a “Danger” tag which stipulates that the equipment or switch so tagged is not to be operated whilst the tag remains in place; and the other an “Out of Service” tag states that the equipment is out of service and like the “Danger” tag, but less prominently, stipulates that the equipment is not to be used. The “Danger” tag is to be used wherever an employee could be in danger in the course of work if the machinery is operated. These requirements were explained to the Applicant at or about the time she commenced her employment and were set out in detail in a booklet handed to her at the same time.

The Applicant’s employment appears to have been uneventful until on or about 27 January last. On that day, she activated a conveyor for carrying samples to the laboratory when the switch, which activated the conveyor, was tagged to indicate that it was out of service. The Respondent alleges that it was also tagged with a “Danger” tag, but the Applicant denies that it was so tagged. At the time the conveyor was activated, the conveyor, unknown to the Applicant, was undergoing repair. Indeed, at the time it was activated a mechanical fitter was working on it. Not surprisingly, the Applicant’s action of activating the conveyor brought a somewhat startled fitter from his working station to the switch, after which the conveyor was turned off. The Applicant says she turned it off, whereas the fitter says it was he who did so.

The Applicant reported her error to her supervisors. She completed an Incident Report in which she said that she activated the conveyor, although it was tagged out by a “Danger” tag. The Applicant now says that she was told by her supervisor that when she activated the conveyor it was tagged out by a “Danger” tag and accordingly put that in her Report. She now says that, although there were two tags on the switch, one of which was an “Out of Service” tag, the other was not a “Danger” tag; although she does not know precisely what that other tag identified. After conducting a formal investigation into the incident, the Applicant was dismissed from her employment on 29 January 1997 with pay in lieu of notice. The Respondent considered the incident to be a serious breach of safety by the Applicant for which there was not any satisfactory explanation.

The Applicant alleges that the dismissal was either harsh, oppressive or unfair and by these proceedings seeks reinstatement. She does not deny that she has done wrong, but in essence argues that the punishment does not fit her “crime”. In brief, she argues that her misdeed caused no harm to any

employee and, coupled with the fact that she had an unblemished record of service, ought not to have been dismissed from her employment. She says that she was under some personal pressure at the time—her godmother having recently been buried—and she was looking forward to commencing her first holiday some two days later—as it turned out the day on which she was dismissed. In addition, of course, she denies that she acted in breach of the dictates of a “Danger” tag.

The Respondent acknowledges that the Applicant had an unblemished employment record. However, its case is that the breach of the Danger Tag Regulations was of such a magnitude that in the absence of a satisfactory explanation, the Applicant’s actions warranted the termination of her employment. It contends that it has a strict statutory responsibility to its employees to ensure that safe working practices are maintained and that the system of danger tagging is a vital ingredient of that requirement. Indeed, it suggests that, on this occasion, it was only by good luck that the fitter was not seriously injured. It argues that the Applicant blatantly disregarded its tag out procedures for no good reason and, in all the circumstances, it was justified in terminating her employment.

To a large degree, the outcome of the proceedings depends upon an assessment of the circumstances surrounding the termination of the Applicant’s employment. To the extent that the parties differ as to the precise details of those circumstances, I have not the slightest doubt that the circumstances were as outlined by the witnesses called on behalf of the Respondent, rather than as outlined by the Applicant. The Applicant impressed me as being unduly concerned to protect her position, even at the cost of accuracy. Her evidence regarding the limited time allowed her by the Respondent to gather her belongings before leaving site was, to say the least, misleading. Likewise, her attempt to excuse her forgetfulness or ignorance of her obligation to comply with even the “Out of Service” tag on the basis that the Respondent had not instituted any refresher courses was, to say the least, somewhat hollow. The evidence showed that the tag was clearly marked to indicate that the equipment is not only out of service, but “not to be operated”. The “Danger” tag also stipulates in very clear letters “do not operate this equipment switch/valve”. Likewise, I feel bound to say that her evidence regarding the nature or description of the second tag sounded insincere and, to say the least, was most unconvincing.

I unreservedly accept the evidence of the fitter, Mr Hutchins. In particular, I find that he placed a “Danger” tag with the “Out of Service” tag, rather than some other tag. He did not know of any tag of the nature described by the Applicant and, moreover, says that the tags he used were obtained from the Respondent’s store. The evidence is that the Respondent has no other tags. Equally, I am quite satisfied, and find, that it was he, rather than the Applicant, who turned off the machine; although except as to credit little turns on that event.

Likewise, I accept the evidence of Mr Hart, the Respondent’s mechanical maintenance superintendent. He testified, amongst other things, that at or about the time the Applicant was dismissed, no one, and certainly not the Applicant, suggested that there was not a “Danger” tag on the switch in question or that the Incident Report prepared by the Applicant was other than accurate. Similarly, I accept the evidence of Mr Henry who, in company with an employee safety representative, interviewed the Applicant and others regarding the incident. I am quite satisfied and find that the Applicant told them that there was a “Danger” tag on the switch in question. I accept, too, that when questioned as to why she ignored the tag, the Applicant said that she was not thinking and when asked whether she was thinking about other things at the time, said she was thinking about going on leave.

In matters of this nature, the Respondent carries the onus of establishing that it had a ground, or grounds, upon which the Commission could find that the dismissal was justified. For these purposes, a dismissal is justified if there was a valid reason, or were valid reasons, connected with, *inter alia*, the Applicant’s capacity or conduct for the dismissal. For the reason to be valid, the reason must be sound, defensible or well founded (see: *Selvachandran v. Peteron Plastics Pty Ltd (1995) 62 IR 371, 373*).

Reflecting upon the circumstances as I find them to be, I have not the slightest doubt that the Respondent has discharged that onus. The Applicant, as I find, activated the conveyor when it was not only tagged out of service, but when it also carried a "Danger" tag. She was informed of, and knew, that equipment which was so tagged should not be activated. The Danger Tag Regulations make it abundantly clear that compliance with the regulations is vital. The "Danger" tag and "Out of Service" tag regulations clearly indicate that a "Danger" tag is placed on equipment to protect employees and that employees must "NEVER operate any plant, machinery or equipment that bears a danger tag or lock". The evidence does not suggest that it was imperative for her to start the conveyor and, in any event, the regulations make it clear that no job is so urgent as to jeopardize the safety and well-being of those in the workplace. Moreover, the regulations expressly indicate that if an employee is instructed to operate a switch which bears the "Danger" tag, it is to be left alone and the matter reported to the employee's supervisor or leading hand. The Applicant did not do that. By her actions, the Applicant put in jeopardy the well being of one of her fellow employees. I am satisfied, having heard from Mr Hutchins, that there was a very real prospect of him being seriously injured and it was more by good luck than anything else that he was saved from injury. In my assessment, her actions, as the Respondent asserts, constituted a serious breach of the Respondent's safety rules and, in turn, a breach of her contract of employment.

Also, I am far from convinced that the dismissal was unfair. The Applicant knew, on taking on her employment, that a breach of the Respondent's safety policies could lead to dismissal. In this case, her employment was not terminated summarily, but with payment in lieu of notice, as her contract provides. Furthermore, it was effected after a thorough investigation of all the circumstances. That investigation, as I find, revealed that the breach of the Respondent's "Danger" tag policy was a significant breach of its safety policies. As previously indicated, in a very real sense it had the potential to cause severe injury to the workmen repairing the equipment in question.

Furthermore, the Applicant did not really provide a satisfactory explanation for her conduct. During the course of the proceedings, she gave at least two reasons for her conduct, one was, in essence, that she overlooked the obligations imposed by the tags, the other was that she thought they had been placed on the wrong switch. As previously mentioned, I find it difficult to accept that she just forgot that tagged switches were not to be operated, whether that was due to the fact that she was under some form of personal pressure, or because of the lack of refresher courses. I accept the evidence of Mr Hart that the tagging procedure and obligations were well known in the workplace. In any event, the dictates on the tags, particularly the "Danger" tag, are clearly identified. I consider it to be more probable that she thought the tags were meant for the crusher switch and concluded that the tags had been put in the wrong spot. The crusher switch is next to, and in the same group as, the conveyor switch. In giving that as the explanation for her conduct, she sounded more sincere than when speaking of the other excuses. Neither reason, however, is very satisfactory, since the tags are clearly marked that the machinery is not to be activated.

In deciding whether or not a dismissal was harsh, oppressive or unfair, it is not for the Commission to substitute its own view for that of the employer as if it was a surrogate manager. Instead, the Commission's role is to make an objective assessment as to whether, in all the circumstances, the action of the Respondent in terminating the Applicant's employment, fell within the range of responses of a reasonable and fair-minded employer. In making that assessment, the Commission is to have regard to the practical, rather than academic, considerations.

This Commission, and indeed the Australian Industrial Relations Commission, has made it clear on a number of occasions in the past that ordinarily termination of employment for a breach of safety policy arising out of defiance of danger tagging rules and regulations is not outside the bounds of a fair and reasonable response (see: *Electrical Trades Union of Workers of Australia (Western Australian Branch) Perth v. Hamersley Iron Pty Limited* (1983) 63 WAIG 234; *Mt Newman Mining Co. Pty. Ltd. v. Amalgamated Metal Workers and*

Shipwrights Union of Western Australia (1984) 64 WAIG 352; and *Collins v. Mawson Pacific Limited*. (1990) 70 WAIG 4128; and see too: *The Amalgamated Metal Workers' Union v. Alcoa of Australia Limited* (1989) Print H9943; *Savakis v. Wilmot Breedon (Aust) Pty Ltd* (1992) Print K4179). Although each case must be determined on its own facts and the facts in the cases referred to are not identical with those now under consideration, they all indicate that the importance of maintaining the integrity of the danger tag and out-of-service system cannot be too strongly emphasised and how serious a breach of the system is to be regarded. As Laing C. observed in *The Amalgamated Metal Workers' Union v. Alcoa of Australia Limited* (supra)—

"In the mining industry often the only guarantee a worker has that his working environment is safe is the isolation tag which has been placed on the particular job. The plain and blunt fact is that the lives of workmates depend on each worker maintaining vigilance in regard to isolation tags."

No one could seriously question the accuracy of those observations. Moreover, an examination of the Respondent's policies, as embodied in the booklet given to the Applicant, as well as to all other employees, leads to no other conclusion. They expressly stipulate that employees "must obey these regulations". Furthermore, they expressly indicate that the Respondent insists on safeworking practices and that the regulations "form the basic requirement". What the regulations highlight is that the tagging process is designed to protect those working on equipment. They impose an obligation on those employees to tag it before working on it, as much as they impose an obligation on other employees to obey the tags. In effect, the "Danger" tag is designed to act as a lock on the equipment to guarantee the safety of those working on the equipment. They form an integral part of the safeworking environment which the Respondent is statutorily obliged to maintain. Obviously, the effectiveness of this environment will suffer greatly if the messages on the tags are ignored.

Of course, it would be wrong for the Respondent to erect a rule that every time a person ignores or breaches the danger tag policy, they are automatically liable to dismissal. Each case must be judged on its merits and those merits include, not only the policy, but the reasons for the breach and any circumstances peculiar to the offender (see: *Gorgevski v. Bostick (Australia) Pty Ltd* (1991) 39 IR 229 at 236). In this case, the matter, in my assessment, was fairly judged on its merits. The breach in question was a serious breach. In a very real sense it put at risk the well being of a mechanical fitter. Injury to him was a distinct possibility and not mere speculation. As previously indicated, the reasons advanced by the Applicant for breaching the procedures are quite unsatisfactory and, to put it mildly, somewhat irresponsible. It is not for the Applicant to make a judgement that the tags were wrongly placed and certainly it is not a responsible act for her to make a judgment of that nature without further enquiry. It was a deliberate and blatant breach and, as I find, not a mere oversight justified by the exigencies of the occasion.

In all the circumstances, I am not only satisfied that the Respondent had a valid reason for terminating the Applicant's employment, but also I am far from convinced, even on balance, that the dismissal was unfair. It follows that the application should be dismissed.

Appearances: Mr. G.C. Sturman on behalf of the Applicant
Mr. G.E. Bull on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Carla Ortuzar

and

Newcrest Mining Ltd.

No. 265 of 1997.

11 August 1997.

Order.

HAVING heard Mr. G. C. Sturman as agent on behalf of the Applicant and Mr. G. E. Bull as agent on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—
THAT the application be, as is hereby, dismissed.

(Sgd.) G. L. FIELDING,
Senior Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act, 1979.

John Edwin Rowe

and

Barmenco Pty Ltd.

No. 1767 of 1996.

11 August 1997.

Reasons for Decision.

SENIOR COMMISSIONER: The Respondent is a contract miner and at all material times carried out underground mining operations at the Davyhurst and Plutonic gold mines for the respective owners of those mines.

The Applicant was employed by the Respondent as a shift boss from January 1995 until on or about 15 November last. In September last he was advised that he was to be transferred from the Davyhurst mine to the Plutonic mine. In fact he did not take up work at that mine. In order to work at the Plutonic mine, the owners required that the Applicant, as with all the employees of its contractors, undergo and pass a medical examination. The Applicant underwent such an examination arranged by the Respondent, but did not meet the necessary standard of physical fitness. He was said to have deficient eye sight, a somewhat defective right knee and abnormal lung function.

The Applicant took exception to that assessment, as indeed he still does. He was at that time on sick leave due to an ulcerated eye which later healed. Upon being certified fit for work by the eye specialist, at the Respondent's request the Applicant underwent a further examination at the same medical clinic as previously. This time the clinic advised the Respondent that the Applicant's vision had improved to a state where he was fit to work, but noted "that in the event of an emergency, his poor lung function and deficient right knee could cause him to be a liability underground where he would need to climb ladders in a hurry or walk quickly over uneven ground".

Subsequently, upon the Applicant asking the Respondent where he was to report for work he was advised that he was to return to the Davyhurst mine, apparently as a production foreman, subject to a meeting of the Respondent's management. At that meeting, it was apparently decided that the Applicant was unfit for work, both at the Davyhurst mine, as well as the Plutonic mine. Accordingly, the Applicant was advised that the proposal that he be employed as the production foreman at Davyhurst was rejected on medical grounds. Approximately a week later, he was informed that he had become redundant because the Respondent had no suitable alternative employment it could offer him. In the result, his employment was terminated on or about 15 November with seven weeks' pay.

The Applicant complains that his dismissal from the Respondent's employment was unfair. He disputes that he was

physically unfit for work, at least for work at Davyhurst. He questions the veracity of the medical assessment that his knee and lungs were so defective as to interfere unduly with his capacity to carry out the job of a shift boss. Indeed, the Applicant contends that he performed adequately the tasks required of him whilst at Davyhurst. The Applicant is now 60 and contends that he is as fit as any normal 60 year old. Furthermore, the Applicant says that his transfer to the Plutonic mine was unfair, if not illegal. Neither he nor the Davyhurst mine manager wanted him to leave the Davyhurst mine. He suggests that the transfer was part of a plot by the Respondent to dismiss him from its employ and refers to the fact that, shortly before he was to be transferred, a new shift boss had been employed at the Davyhurst mine, thereby creating a surplus of shift bosses.

The Respondent's case is that it transferred the Applicant because there was a need for another shift boss at the Plutonic mine. The most economical arrangement for the Respondent was to transfer the Applicant, who, it is common ground, lived in Perth, whereas the other shift bosses at Davyhurst lived nearby the mine in Kalgoorlie. Furthermore, of the shift bosses employed at Davyhurst, the only one who could meet the police test required by the owners of the Plutonic mine was the Applicant. The Respondent says that, having made the decision to transfer the Applicant, it had no option but to require the Applicant to submit to a medical examination. Having been informed upon medical advice that the Applicant was unsuitable for work underground, it had no alternative but to dispense with his services. The Respondent had no other jobs which the Applicant could usefully perform. It was concerned that, if he was employed underground and there was an emergency and the Applicant was found wanting, it would be responsible for any loss or injury because of the medical advice previously given to it regarding the Applicant.

The provisions of section 23AA of the Industrial Relations Act 1979 apply to these proceedings. Accordingly, it is incumbent upon the Respondent to establish that there is a ground on which the Commission could find that the dismissal was justified. For these purposes, a dismissal is justified if there was a valid reason, or were valid reasons, to terminate the Applicant's employment connected with the Applicant's capacity or conduct or based on the operational requirements of the Respondent. To be valid in this context, the reason should be one which is sound, defensible or well founded (see: *Selvachandran v. Peteron Plastics Pty Ltd (1995) 62 IR 371, 373*). Whether that onus is satisfied depends to a large degree on a consideration of the circumstances leading to the termination of the Applicant's employment.

There is little conflict in the evidence adduced by the parties regarding this matter. The principal conflict in the evidence is between the testimony of the Applicant and that of some of the medical practitioners he consulted, in particular Dr. Hirsch, who was a member of the clinic to which he was sent by the Respondent. The Applicant denies that he told Dr. Hirsch he was as debilitated as Dr. Hirsch suggested. In this regard, I am inclined, with the benefit of having heard him, to accept the evidence of Dr. Hirsch. Dr. Hirsch testified that the Applicant told him that he had difficulty running, both because of his knee and his breathing. I accept that to be what in fact the Applicant told him. It is the type of information that a doctor is not able to obtain without information from the patient unless, which seems unlikely, the Applicant was required to run around the surgery. Furthermore, the Applicant admitted during the course of the proceedings that his breathing made it difficult for him to run (although he did not say he could not run) and that from time to time he had discomfort with his knee. Although Dr. Hirsch now accepts that it was an over-statement on his part to say that the knee prevented the Applicant from kneeling, as he reported, it is clear that the Applicant suffers from poor lung function and has a somewhat defective right knee, as Dr. Hirsch and his assistant reported to the Respondent after his second medical examination.

There was also some conflict in the evidence of the Applicant as to what he is reported to have told Dr. Broom, his own doctor early this year. However, in view of Dr. Broom's testimony, that issue has been clarified to the point where, in essence, there is no conflict. In any event, I accept the position to be that, when the Applicant consulted Dr. Broom, he did so not because he was suffering pain and physical discomfort

but, rather, in order to obtain a second opinion with a view to challenging the assessment made by Dr. Hirsch.

I am far from convinced that the Respondent embarked upon a plot to remove the Applicant. Rather, I accept the evidence of Mr. Manning, the Respondent's area manager responsible for both the Davyhurst and Plutonic mines, that he transferred the Applicant because of a shortage of supervisors at the Plutonic mine, because it was more economical for the Respondent to transport the Applicant between there and Perth than between Kalgoorlie and Perth, as was necessary for Davyhurst, and because, unlike the other supervisors at Davyhurst, the Applicant was able to pass the police test required for the Plutonic mine. There is no evidence to indicate that the Respondent expected the Applicant to fail the medical examination when he was selected for the transfer. On the contrary, the inter office memoranda tendered in these proceedings suggest that the Respondent was looking for a "clearance" for the Applicant to commence work underground as a shift supervisor. Indeed, if he was the only supervisor with the necessary police clearance for the Plutonic mine, the Respondent had good reason to want him to be transferred, rather than be dismissed from its employment.

On the basis of the evidence adduced in these proceedings, it is not clear whether the Applicant was employed by the Respondent to be a shift boss at the Davyhurst mine only, or whether he was employed to be a shift boss at large for all of the Respondent's undertakings. The job application form which the Applicant completed after he commenced employment with the Respondent is silent on the subject. However, having regard to the circumstances which gave rise to his employment, it seems reasonable to infer that he was engaged as a shift boss for the Davyhurst mine. It is common ground that the Applicant was approached to work at the Davyhurst mine by the Respondent's manager at Davyhurst whom he knew, because the Respondent was short of underground shift bosses there. In the circumstances, it may well be that the attempt to transfer the Applicant to the Plutonic mine was unlawful. Alternatively, it is not difficult to make a case that the attempted transfer was unfair. As the Respondent's current manager for human resources, who took up that post after the Applicant's employment was terminated, testified, it would have been more sensible before transferring him out of Davyhurst to ascertain whether he was qualified in every respect for the job at the Plutonic mine. The other shift bosses employed at Davyhurst were not transferred because they were not qualified in every respect (being unable to pass the necessary police tests) and it is difficult to see why the Applicant should, in the circumstances, be treated any differently. It was not as if the Respondent had too many shift bosses at Davyhurst. As is common ground, it appointed an extra person to replace the Applicant.

However, in the final analysis the Applicant appears to have been dismissed, not because, as the events transpired, he did not meet the requirements for work at the Plutonic mine, but because he was, in the Respondent's opinion, considered to be unsuitable for work as a shift boss anywhere and because the Respondent did not have any suitable alternative employment for him. I accept that it was for this reason, and this reason alone, that the Applicant's employment was terminated. Indeed, it appears that, initially at least, some of the Respondent's administrators were prepared for him to go back to the Davyhurst mine when it became apparent that he did not meet the induction requirements of the Plutonic mine owners. It was only upon further reflection of the medical advice that it appears that the decision was made to terminate his services.

In matters of this nature, the question is whether, in exercising its right to terminate the employment of the Applicant on those grounds, the Respondent acted in the way a reasonable employer could be expected to act. It is now trite to say that it is not for the Commission to act as if it was a surrogate manager of the Respondent's business and decide what it would have done, faced with questions of whether or not to terminate the Applicant's employment, but, rather, to assess whether in all circumstances the Respondent acted outside the range of reasonable responses which an employer could have taken in the circumstances (see: *Miles & Ors v The Undercliffe Nursing Home v The Federated Miscellaneous Workers' Union of Australia, Hospital, Service & Miscellaneous, W.A. Branch. (1985) 65 WAIG 385*).

No reasonable and fair minded person could suggest other than that the Applicant was the victim of unfortunate circumstances. The indications are that, had he not been selected for transfer to the Plutonic mine, a transfer which he neither sought nor wanted, he would not have undergone a medical examination, and in all probability would still be working at the Davyhurst mine. The fact remains, however, that the Respondent came into possession, for whatever reason, of medical advice which indicated that his poor lung function and deficient right knee could cause him to be a liability underground. That advice was given after the Applicant had been twice assessed by members of a medical clinic, which clinic, as the unchallenged evidence suggests specialises in occupational medicine and is regarded by the mining industry as having a sound knowledge of the industry requirements.

Although it appears that those who assessed the Applicant's physical capabilities wrongly thought that the Applicant was a working shift boss, their final assessment is not seriously, if at all, undermined by that fact. The assessment that the Applicant would be a liability underground was based on the need for him to climb ladderways in a hurry or walk quickly over uneven ground. It is common ground that in the case of emergency the Applicant could be required to climb ladderways in a hurry or walk, if not run, quickly over uneven ground. In any event even, if the position was that the medical assessment was inaccurate, it is not the Respondent's position to go behind it unless, of course, it was obviously wrong. The Respondent's obligation was to ascertain, after reasonable enquiry, the true state of the Applicant's medical condition. That does not require that the Respondent cross examine the medical practitioner who made the assessment (see: *Liverpool Area Health Authority (Teaching) Central & Southern District v. J. Edwards [1977] IRLR 471*).

Counsel for the Applicant argues that the contents of the medical report ought to have been drawn to the Applicant's attention earlier than was the case. The indications are that he did not see the medical reports on which the Respondent relies until well after his dismissal. There can be little doubt that the contents of the reports should have been more fully discussed with him, as indeed counsel for the Respondent rightly acknowledged. Clearly, discussion in matters of this nature is important, if only to ensure that the correct information is given to the medical advisers. In this instance, however, the medical practitioners relied on the information given to them by the Applicant, rather than by the Respondent. Furthermore, on the evidence, there is little to suggest that had there been proper discussions between representatives before the Applicant's dismissal, the result would have been any different. A medical assessment made by the clinic after the Applicant was dismissed and as part of the conciliation process associated with these proceedings, suggests that from a medical viewpoint the Applicant "is not the most suitable candidate for the position of a working shift boss". Again, the medical practitioner who undertook what seems to have been a thorough examination, appears to have been under the false impression that Mr. Rowe was a working shift boss rather than simply a supervisory shift boss. However, as in the previous assessments, his final assessment appears to have been made on the basis, which is correct, that the Applicant's duties "include checking all ladderways and escape routes to ensure that they can be used in an emergency" and "also involves a senior role in emergency procedures."

The Applicant was diagnosed to be suffering from right knee patello-femoral osteoarthritis, which was likely to be aggravated with the climbing of ladders causing pain and swelling "and probably leading to time lost from work". In addition, he was diagnosed as suffering from mild obstructive pulmonary disease which although "not a problem under normal circumstances, in the event of an emergency, where rapid evacuation such as running on foot may be required it may become significant". The report also concluded that he was suffering from a degree of visual impairment, which I accept to be erroneous, given the evidence of Mr. Crawford, a specialist ophthalmologist. Nonetheless, the plain fact is that even now there is little or no medical evidence to challenge the assessment made on three separate occasions by the clinic to which the Applicant was referred that, at least in situations of an emergency, the Applicant could be a liability, given the state of his physical health.

Even if the Applicant had provided the Respondent with a more favourable medical assessment of his physical capabilities, the decided cases make it clear that in the final analysis it is for the Respondent to decide which of two contradictory medical opinions it wishes to act upon (see: *W.G. Jefferies v. B P Tanker Co Ltd [1974] IRLR 260*). No one can sensibly question that, in the mining industry, particularly underground, high standards of safety are required and there is simply no scope for unnecessary risks. In those circumstances the Respondent could be forgiven for choosing to act upon the least favourable assessment of the Applicant's physical condition. The fact that the Applicant so far has worked without mishap is no reason to suggest that the Respondent should continue to run a risk of which it was unaware, until the medical examination of the Applicant.

For the foregoing reasons, I am satisfied and find that the Respondent has discharged the onus which it bears by reason of section 23AA of the Act. The Respondent had a valid reason connected with the Applicant's capacity, due to his physical condition, to terminate the Applicant's employment.

Furthermore, in the face of the medical advice given to the Respondent, I am satisfied the Respondent's decision to terminate the Applicant's employment fell within the range of responses of a reasonable employer faced with the situation under review. Thus, I am not satisfied that the Applicant's dismissal was, in all the circumstances, unfair. Having regard to the fact, as is common ground, that as the shift boss it is the responsibility of the Applicant to manage an evacuation in the case of an emergency and to generally superintend the safety of the miners underground, the Respondent cannot, in my opinion, be said to have acted irrationally or unfairly in terminating his employment as an underground shift boss, whether it be at the Davyhurst mine or at the Plutonic mine. That is all the more so, having regard to the statutory obligation on mine owners and contractors to ensure that mining operations are safe. Indeed, having regard to the growing emphasis on safety in the workplace and having regard to the nature of underground mining and the potential for emergencies, I cannot think that it was unreasonable for the Respondent not to want to run the risk of having the Applicant work underground. The fact is that all medical evidence suggests that there was a risk in having the Applicant employed underground. In my view, it is a risk which the Respondent should not be forced to take against its will. Not only was he dismissed, as I find, for a good and sound reason, there was, as I find, no suitable alternative employment for him within the Respondent's enterprise. Such evidence as there is suggests that the Respondent considered employing him in an alternative administrative capacity, but it appears, even on the Applicant's evidence, that he had few, if any, qualifications for that position. Upon termination of his employment, he was paid seven weeks' pay, which amounted in the order of \$13,500, in addition to his accrued entitlements. It is not entirely clear how that sum was made up. The Applicant simply says it was redundancy pay. The Respondent, by its Answer, asserts that he was paid three weeks' pay in lieu of notice and four weeks' pay as a redundancy payment. The formal Statement of Termination Payment gives some reason to believe that the payment was indeed made on that formula. In any event, taking into account the Applicant's length of service, his age, the requirements of the Workplace Relations Act (Cth) and the redundancy standard fixed under the Termination Change and Redundancy formula of the Commission, I cannot think that the total sum paid to the Applicant was inadequate, certainly not so inadequate as to render the dismissal unfair.

Appearances: Mr. C.D. Raymond of counsel on behalf of the Applicant

Mr. T.M. Retallack of counsel on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act, 1979.

John Edwin Rowe

and

Barmingo Pty Ltd.

No. 1767 of 1996.

11 August 1997.

Order.

HAVING heard Mr. C. D. Raymond of counsel on behalf of the Applicant and Mr. T. M. Retallack of counsel on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be, and is hereby, dismissed.

(Sgd.) G. L. FIELDING,

[L.S.] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Marcus Roza

and

Classique Health Products Pty Ltd

Club X.

No. 513 of 1997.

COMMISSIONER J. F. GREGOR.

30 July 1997.

Reasons for Decision.

On 12 March 1997, the applicant (the applicant) applied to the Commission for an order pursuant to Section 29 of the *Industrial Relations Act, 1979* (the Act) on the grounds that at the completion of the contract of employment with Classique Health Products Pty Ltd Club X (Club X), he had been unfairly dismissed and was entitled to outstanding benefits under his contract of employment. The applicant was a participant in the New Work Opportunities—Focus Programme which is a labour market initiative funded by the Department of Employment, Education, Training and Youth Affairs.

On 9 September 1996, after referral from his Case Manager, the applicant entered into a New Work Opportunity Sponsor/Participant Agreement. The work experience and training at the placement was to continue until 7 March 1997. The total period of the placement in the programme was to be for 26 weeks. The applicant was to work as an assistant in shops operated by the applicant's sponsor, Perth "Lovers" stores. The applicant was to be covered under the Professional Vocational Services (PVS) payroll and his host employer was to be Lovers Book Store in East Victoria Park.

The applicant did not complete the full programme. He left after six months when he was offered a full time position with Club X. The offer of employment was contained in a letter to the applicant from the HGC Administrative Services Pty Ltd (HGC), which is the administrative arm of the various companies that form the Club X chain in Australia (*Exhibit F2*). The offer was made with HGC acting as an agent for Classique Health Products Pty Ltd, which was then in the process of acquiring the 7 "Lovers" stores from Mermaid Beach Holdings Pty Ltd. The applicant was advised that under the terms of the sale agreement, it was a requirement that he be offered 3 months employment with Club X on substantially similar conditions to those which he was currently employed. The letter in effect was an offer of engagement which in its terms was subject to satisfactory performance during a probation period of 3 months and in accordance with specific terms contained in the letter (*Exhibit F2*). The applicant was required to acknowledge that he had read and understood the

contents of the letter and apparently he did so because Club X became his employer. The applicant's role during the programme was initially as a retail assistant, but at the time he received the offer of full time employment he had assumed responsibility for running the Lovers Book Store in North Perth.

The managerial position was offered to him at the instance of Mr Alan George Marsh, who was at the time of the sponsorship agreement, the General Manager of the "Lovers" stores. Mr Marsh described the early training of the applicant. He had been put in various stores for up to three days to give him an opportunity to see how other store managers operated stores in various locations. In November the manager at North Perth resigned due to illness and Mr Marsh saw it as an opportunity to see how the applicant would perform as a store manager in training. The appointment was made and the applicant did well. In the first couple of weeks there were obvious small problems with matters which he was not familiar that needed to be corrected but he was conscientious, his time keeping was good and he was always courteous to the customers and other staff.

Mr Marsh described the take over arrangements instituted by Classique Health Products Pty Ltd in the period leading up to 15 December 1996. After that date Mr Marsh was in his own terms being 'phased out' of the operation but he introduced Mr Mark Coleman (who took over the position of General Manager) to the applicant and it was Mr Coleman who eventually made the appointment of the applicant.

In his evidence, the applicant told the Commission that he had been made an offer by Mark Coleman, who had been happy with both the way he (the applicant) had been progressing and his commitment to the company. Mr Coleman offered him a full time position which meant he came off the training scheme. The applicant gave evidence that he had been asked to attend the premises of Club X East Victoria Park store where suggestions were made that employees take up workplace agreements. He felt confused about what would happen if he did not because he had the general understanding that if he did not sign an agreement he would lose his job. This led him to make various enquiries with the office of the Workplace Agreement Commissioner. He became further confused when he was asked to sign a document confirming that he was the permanent Store Manager when the Workplace Agreement described him as occupying a casual position. He signed the agreement because he believed that if he did not he would be out of a job on the following Monday. He later changed his mind and wanted the agreement back. Eventually he found he was the only employee who had not lodged the agreement.

The applicant stated that there was an incident when Mr Coleman referred to the general tidiness of the North Perth store but the applicant did not regard that as a warning. On 28 February 1997, Mark Coleman and Tracey Roberts came into the store and after the customers had left Mr Coleman told the applicant that as of 18 March 1997, his services were no longer required but he was to leave the store immediately and give back his keys. The applicant asked if he was to turn up for work the next day and he was told to leave immediately. The only reason he was given as to why he was to leave was that he was 'giving bad light on the company'. He was told nothing else. In his own mind he thought he had been dismissed because he did not sign the workplace agreement but the employer made no such comments to him. The only thing that Mark Coleman said was that he was sorry about this (dismissal) and he would see the applicant later. He had some further contact with officers of the company in Melbourne. After 7 March 1997, the applicant was contacted by Mark Coleman and told that to avoid high taxation, he would be paid fortnightly instead of a lump sum. Ultimately he was paid up until 18 March 1997 and received annual leave entitlements.

The applicant told the Commission that he knew nothing more concerning the reasons behind this dismissal until he made an application to the Commission under Section 29 of the Act. In the respondent's Notice of Answer and Counter Proposal, there was an allegation made concerning his conduct during a telephone conversation with an employee of Q Alarms, the security company that provides services to the North Perth store. In his evidence the applicant said that he had the responsibility every night to check with Q Alarms, telling them he was leaving the store and that the alarm had been put on.

He remembered a conversation with a female employee of Q Alarms but it was flirtatious and in fun. In his evidence he said if any offence was taken, he was truly sorry because he did not mean to harass the employee of Q Alarms. What he said was in general jest and fun. He was not sure of the date on which the conversation took place. The applicant was of the view that the respondent should have informed him at the time the allegation was made and given him the opportunity to respond before he was dismissed because he had an appropriate explanation of his behaviour and was sorry if he caused embarrassment to the female employee at Q Alarms.

The applicant was cross examined about the contents of the conversation by Mr Kavenagh, of counsel, who appeared for Club X. The applicant stated he had seen a transcript of the taped conversation but did not think it was a fair record because the recording was mumbled, there were parts left out and he alleged that it had been edited. However, he did agree with Mr Kavenagh that he rang Q Alarms to tell them he was leaving.

I include hereafter the relevant transcript of the tape.

Female Alarms, can I help you?
 Male #1 Yes, good evening.
 Female Good evening.
 Inaudible mumbling.
 Female #2 Be right out to help you (background noise).
 Female (laughter) What a smoothie.
 Male #1 Well I try to be, I try to
 Female(laughter) who's that?
 Male #1 This is Marcus from Lovers, North Perth.
 Female All right, Marcus yes.
 Male #1 I love your voice.
 Female Yes, do you? It's cost me a fortune to get it this way.
 Male #1 Has it? I thought it just comes as natural talent.
 Female Well, no I've worked on it, I did. And what are you up to Marcus?
 Male #1 Well, actually I'm about to leave the store soon.
 Female Oh right.
 Male #1 Um, so I thought I'd, you know, ring you guys and tell you that I'm leaving.
 Female Oh lovely, you are a good boy, you obviously do as you're told.
 Male #1 Yeh, I do as I'm told in other situations as well.
 Female (laughter)
 Male #1 (Inaudible)
 Female (laughter) You little devil. Yeh that would be
 Male #1 Let me guess, you're a married woman who's happily married and
 Female (laughter) Yeh, that's true.
 Male #1 Dammit! Go for a threesome?
 Female Pardon?
 Male #1 Go for a threesome?
 Female Go for a what?
 Male #1 A threesome.
 Female Oh, I shouldn't think so (laughter) not at all, not with my big burly husband. I wouldn't want to share him with anybody.
 Male #1 Well you're a lucky girl then aren't you and he's a lucky man.
 Female Absolutely. OK Marcus, so you're leaving soon are you?
 Male #1 Yeh, in about the next ten minutes or so.
 Female All right then. Okey dokey.
 Male #1 Have a good night.
 Female Catch you later.
 Male #1 See you later.
 Female OK
 Male #1 Bye

Mr Kavenagh cross examined the applicant concerning the alleged sexual nature of what he had said to the Q Alarms

employee. The applicant said that a threesome could relate to any sort of intimate proposal between people and that he did not mean in a sexual sense. It was more of a suggestion for intimate behaviour although he admitted that it could be taken by someone else to be of a sexual nature. In re-examination he told the Commission that there was no material at Club X that described company policy on how employees were to conduct themselves concerning sexual harassment.

No evidence was called by the respondent in this matter. The Commission is unaware, therefore of the reasons for the termination. For instance, who complained to the respondent, how the respondent went about checking the information it received, what efforts were made to give the applicant the opportunity to know the substance of the charges made against him and to address them. Instead, counsel for the respondent said that quite simply the language the applicant used entitled the respondent to summarily dismiss him on the basis that the words used suggested that the other person in the telephone conversation was being asked to engage in sexual activity. Mr Kavenagh submitted that whatever the view of the meaning of the words used, they would entitle the respondent to summarily dismiss. The language may have been acceptable in the particular work place given the type of business the respondent was in, but to use such language to a customer or a third party was clearly misconduct.

Before I make some comments on witness credit, I need to canvas the law to be applied here. Although it was not raised by either of the advocates involved in this matter, the Commission has to address the onus as it flows from s.23AA of the Act. By that section, the respondent is required to establish—

'there is ground or grounds on which the Commission could find the dismissal was justified'.

This means that a dismissal is justified if there was a valid reason or were valid reasons connected with the employees capacity or conduct or, based on the operational requirements of the undertaking, establishment or service, for the dismissal. The Act does not require that the employer act upon grounds which are justifiable but that the employer establish that there is, or are, grounds on which the dismissal could be justified, and whether or not the employer acted on those grounds. Therefore, the Act requires that only the employer prove on the balance of probabilities, the possible existence of justifiable grounds for dismissal, not the actual existence of those grounds.

On the basis of what has been put in these proceedings, I conclude that the respondent has not established that there are grounds for the dismissal and I am unable to decide whether they would have provided a valid reason for termination. Therefore the obligation on the respondent flowing from s.23AA of the Act has not been met (*Melissa Jaggard v. Tranby* (1996) 76 WAIG 4720).

In the event that this preliminary finding is wrong, I need to examine whether the respondent has nevertheless acted harshly, unfairly or oppressively in its dismissal of the applicant.

It is for the applicant to establish that the dismissal was in all the circumstances unfair. The test for ascertaining whether a dismissal is harsh, oppressive or unfair is that outlined by the Industrial Appeal Court in *Undercliff Nursing Home v. Federated Miscellaneous Workers Union of Australia* (1985) 65 WAIG 385. The question to be answered is whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the Act may still be unfair if, for example, it is effected in a manner which is unfair but if the employment has been terminated in a manner which is procedurally irregular that will not of itself necessarily mean the dismissal is unfair (*see Shire of Esperance v. Mouritz* (1991) 71 WAIG 891 and also *Byrne v. Australian Airlines* (1995) 65 IR 32). In *Shire of Esperance v. Mouritz*, Kennedy J also observed that whether an employer in bringing about a dismissal adopted procedures which were fair to the employee, is but an element in determining whether the dismissal was harsh or unjust.

I need also to discuss the question of onus. I do so by reference to the decision of the Full Bench in *The Breweries and Bottleyards Employees Industrial Union of Workers of Western Australia v. Bond Brewing WA Ltd* (1989) 69 WAIG

3228. In his judgment the President of the Commission observed (that) the onus is upon the applicant to demonstrate that the dismissal was unfair on the balance of probabilities. There is however an evidentiary onus within that context upon the employer to prove that it is justified as a summary dismissal if it has been contended that such has occurred. Proof of misconduct and the existence of the employers lawful right to dismiss the employee does not conclude the matter if the exercise of that right was unconscionable (*see RRIA v. AMWSU* (1988) 68 WAIG 2661). At page 3231 of his reasons the President wrote—

"It was and is for the appellant to establish at first instance, on the balance of probabilities, that the dismissal was unfair and for the respondent to establish its evidentiary onus as to the justification of the summary dismissal according to the same standard of proof."

I now turn to witness evidence and my assessment of credibility. The applicant gave evidence and was subject to cross examination. He appeared to me to be sincerely sorry about the circumstances in which he found himself as he was sorry for what he had said to the employee of Q Alarms. I have no reason to conclude he was anything other than truthful in the evidence he presented to the Commission. The only other evidence was received from Mr Alan Marsh who similarly provided the Commission with a truthful account of his involvement in the matters. There was no evidence called on behalf of the respondent. Counsel for the respondent made a number of challenges to the applicant during his cross examination and extracted some admissions from him but there were a number of occasions when the applicant did not make admissions and rejected propositions put by Counsel. For instance, as to the reliability of the tape, as to when the conversation with the employee of Q Alarms took place, as to when the applicant found out about the existence of the tape, to mention but a few. In the absence of evidence being adduced to support the propositions upon which counsel for the respondent based a number of his questions, I have to conclude that in those instances the evidence of the applicant has to be accepted.

I now turn to my analysis of this matter. It appears to me that this applicant was summarily dismissed even though he, ultimately, was still receiving payment a month after his dismissal. The fact of the matter was that he was instructed to surrender his keys and to leave the premises immediately. In addition, I find that he had no idea at all as to the reasons which led the respondent to terminate his services. He was not told who, if anyone, complained about him, nor the detail of the complaint. He was not given the opportunity to give an explanation as to his conduct. He described his approach to the employee of Q Alarms as being flirtatious. The tape indicates there was some reciprocity of that approach, at least in the early parts of the conversation. At no time during the conversation did the employee of Q Alarms take issue with the applicant about his conduct. That of course does not justify his conduct at all but I will make further comments about that later.

The applicant was in a position where he did not know why he had been dismissed. He was not given the opportunity to address the complaint, if any were made. He was in that way denied natural justice and the employer has acted contrary to the rules that are set out in the *Shire of Esperance v. Mouritz* (1991) 71 WAIG 891 (*supra*). In that case it is made clear by observation of Kennedy J, that whether the employer in bringing about the dismissal adopted procedures which were fair to the employee is but an element in determining whether dismissal was harsh or unjust. That writing is a suggestion that the whole of the circumstances need to be addressed, but it does not mean that the need to have a fair procedure is abandoned altogether. In this case, there was no procedure that can be ascertained purely for the fact that no evidence was called on behalf of the respondent upon which the Commission could form a judgment as to its conduct in the dismissal.

In this case I am forced to the conclusion that in the event of a summary dismissal as this was, the respondent has not discharged an evidentiary onus to establish the fairness or otherwise of the dismissal nor had it discharged the onus upon it under s.23AA of the Act, a duty that is incumbent upon it as a statutory requirement. The applicant's behaviour during his

discussion with the employee of Q Alarms is unacceptable in contemporary business life. No female employee should have to accept a conversation with a sexual connotation whether overt or not. Whether in all of the circumstances that surround this case, the applicant should have been dismissed I am unable to ascertain because the Commission has been denied the opportunity to examine the evidence on behalf of the respondent. In the circumstances, I am forced to the conclusion that the applicant has been unfairly dismissed.

I have considered the question of reinstatement as I am required under the Act. Having reviewed the evidence of the applicant, it is clear that a viable relationship could not be re-established between the parties. I therefore examine the question of compensation and apply the principles that were set out by the Commission in the decision of the Full Bench in *Gilmore v. Cecil Bros, FDR Pty Ltd and Others at page 4447*. On the application of those principles, which I discussed in my Reasons in *Bramwell v. Swan Yacht (1996); unreported; 1 July 1997*. I have reached the conclusion that the applicant has suffered loss or injury and that he should receive compensation. Having considered his length of service and his previous attempts at employment, I have concluded that in all the circumstances compensation equivalent to one month's pay should be made by the respondent. I will issue orders that the applicant be paid the sum of \$2,020.00.

Part of the application dealt with a claim for contractual benefits for overtime not paid. It is clear on the evidence before me that the Commission has no jurisdiction to deal with this claim. The applicant's conditions of employment are most likely covered by an award of this Commission and that being the case, he should seek remedy in the appropriate jurisdiction.

Appearances: Mr A. Fitzgerald appeared for the applicant

Mr T. Kavenagh (of counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Marcus Roza

and

Classique Health Products Pty Ltd

Club X.

No. 513 of 1997.

COMMISSIONER J. F. GREGOR.

15 August 1997.

Order.

HAVING heard Mr A. Fitzgerald on behalf of the applicant and Mr T. Kavenagh, of counsel, on behalf of the respondent, the Commission pursuant to the powers conferred on it by the Industrial Relations Act, 1979, hereby orders—

- (1) THAT Marcus Roza was unfairly dismissed by Classique Health Products Pty Ltd Club X on 28 February 1997; and
- (2) THAT reinstatement of the employment relationship is untenable and that Marcus Roza should be paid compensation for loss or injury; and
- (3) THAT the Classique Health Products Pty Ltd Club X pay to Marcus Roza, compensation in the sum of \$2,020.00.
- (4) THAT the compensation in (3) hereof is to be paid within 14 days of the date of this order.

(Sgd.) J. F. GREGOR,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pakorn Siriyakul

and

Sala Thai Trading Co Pty Ltd.
T/A Thai On The Hill Restaurant.

No. 865 of 1997.

COMMISSIONER J F GREGOR.

5 September 1997.

Reasons for Decision.

THE COMMISSIONER: On 7 May 1997 Pakorn Siriyakul (the applicant) applied to the Commission for an order pursuant to Section 29 of the *Industrial Relations Act, 1979* (the Act) on the grounds that he had been unfairly dismissed from employment at Sala Thai Trading Co Pty Ltd a company which operates the Thai On The Hill restaurant at Kalamunda (the respondent). The applicant alleges that at the time of dismissal there were entitlements due under a fixed term contract in the sum \$23,320. In addition he claimed a return airfare to Thailand valued at \$3,600.

The applicant commenced duty at Thai On The Hill Restaurant at Kalamunda on 8 April 1997. The contract came to a conclusion in controversial circumstances on 6 May 1997. The Commission heard the application on 4 August 1997 at which time the applicant, who was unrepresented, put his case. The Commission arranged at no cost to the applicant for an interpreter to assist him, it also arranged for a translation of written submissions from Thai language into English again at no cost to the applicant.

In his evidence the applicant told the Commission something of his background. He said he had been the owner of a Thai restaurant in his native country and in the past had owned other restaurants in Thailand. Ten years ago he had been taught to cook Thai food by Master Wichian Jantaraha. Master Wichian gave evidence on behalf of the applicant in the proceedings on 4 August. The applicant claimed he was sponsored to come and work in Australia first at the Satay House Restaurant and subsequently at the Thai On The Hill Restaurant. He told the Commission that the relevant events concerning his employment history are that on 14 April 1996 he was in Western Australia and was asked to demonstrate Thai cooking to the owner of Satay House Restaurant. He produced food for consumption of the family of the owner at the owner's house. In April 1996 he returned to Thailand for a period of two months after which he was sponsored from Thailand to work at Satay House as a chef of Thai cuisine. The contract of employment commenced in September 1996 but by that time the owner of the Satay House had become ill and that a Mr Edward Lim was then running the restaurant. According to the applicant this caused a change in heart at Satay House, it stopped serving Thai food and he was asked to leave. The circumstances of the severance of the relationship between the applicant and Satay House became the subject of proceedings before this Commission otherwise constituted. That application was settled between the parties.

After the applicant ceased work at Satay House he worked at Thai on the Terrace restaurant in Mandurah. Sponsorship arrangements to cover the applicant's immigration situation were completed and the applicant, after a wait, was given a work visa. The applicant was unable to work until 7 March 1997 when he received a visa which would expire on 7 March 1999. This, the applicant told the Commission, was a critical matter for him because if he had no work in accordance with his sponsorship arrangement and his visa expired then he would have to leave Australia. On 8 April the applicant started work at the Thai On The Hill Restaurant for a period of two weeks. At around that date the principal, Mr Somchai Siriburana (Henry) went to Sydney and arrived back early in May. Henry asked the applicant what he had been doing. The applicant claimed that Henry made no reference to a requirement for him to work a four week trial period. As far as the applicant was concerned the next relevant matter was when Henry told him to leave Thai On The Hill and gave him a cheque for \$740 as wages for two weeks' work. The applicant says that the reason Henry gave him for severing the contract of

employment was that there was not enough money to employ and pay him in the future. The applicant had asked Henry if there were any additional reasons for his termination and was told there were none or, alternatively, there was nothing more to say.

The Commission heard evidence from a number of persons. Master Wichian Jantaraha told the Commission that he had trained the applicant in the Thai cooking arts. Witnesses were called on behalf of the respondent, two of those witnesses were from Satay House. They told the Commission that the applicant was unable to cook Thai food, he was only able to cook food to the standard used by staff. The applicant says that the two witnesses were Singaporean and were, in his view, incapable of making Thai food, they therefore did not understand it and their evidence should be discounted on that basis. He told the Commission the evidence that was received from Ms Val should be discounted because Val was either the wife or ex-wife of Henry and she was also unqualified to comment on the quality of his cooking. The Commission was also asked by the applicant to disregard the evidence of Mr Boonruang, the first chef at Thai On The Hill and who had reviewed the work done by the applicant. The applicant says that the evidence of Boonruang should also be discounted on the basis of competence. In his evidence the applicant complained that he was required to wash dishes and clean floors and this was not in his agreement, he also had to work long hours.

In summary, the applicant told the Commission that from his point of view, Henry had never mentioned that he was to be tested for work skills, nor was he told he was not doing his job. He claimed that Henry had tried to take advantage of him and he was asked to leave for reasons which are unfair. Additionally he was made to carry out work which was not in the agreement, whether that be washing the dishes or cleaning the floors or taking out the rubbish. He said that it was alleged he cooked badly so he was put to menial work. He told the Commission that if he had known from the beginning he was being tested for his work, he probably would not have waited in Australia for his visa to be approved. This process took from 5 November 1996 to 7 March 1997 and then he had to be work tested for four weeks. This caused him great personal inconvenience because his children had quit their work, left their place of birth and home to come to Australia. He would not have allowed that to happen if he thought he was under test.

On behalf of the respondent, Mr Wilson (of Counsel) told the Commission that the respondent's version of events is that the applicant was engaged as a first chef initially at the Thai On The Terrace Restaurant in Mandurah and then the Thai On The Hill in Kalamunda, it was a condition of those engagements that he was required to carry out the duties specified in the job description, (*Exhibit W4*). The applicant admitted during the proceedings that he received the job description and clearly knew what duties were required of him before he commenced the engagement. He told Henry that he could do the tasks. In the Commission he said he could do all of the tasks apart from some Thai dishes. He had been hired on his assertion that he had the necessary skills and expertise and the respondent knowing that there were rumours that he had some difficulties at Satay House and Thai On The Terrace, was nevertheless willing to discount those rumours and trusted the applicant's promises as to his own ability. The applicant knew full well, and admitted in evidence, that from a conversation between himself and Henry in January, that if he could not cook Henry had no job for him. The applicant knew that Henry would only employ him if he could do the tasks specified in the job description.

On 8 April, Henry gave the applicant notice and told him that he had four weeks to show that he could do the work required, the work that he had said that he was able to do before the arrangement was made for him to work at Thai On The Hill. In the final analysis the applicant could do neither cooking part of the tasks, nor the other duties required. More particularly he had not been willing to learn. His time keeping was bad, he never arrived before between 1.20 or 2.00pm, and this denied the respondent the opportunity to assist him to learn the skills, without which, he could not perform his part of the bargain. He had pretended to have skills, he did not have them, his incompetence was discovered, he then made excuses, none of which were legitimate. During the four weeks' trial given to him at Kalamunda he was deficient in an essential expressed

term of the contract he had with the respondent that he was in possession of the skills and expertise for which the respondent would pay. In the absence of those skills there was no other employment available to the applicant. According to Counsel for the respondent, at best the applicant grossly overstated his abilities, at worst he misrepresented them to obtain a 12 month residence in Australia. In either case the respondent was entitled to terminate the contract of employment and could have done so earlier than the four weeks after 8 April because it was clear before then that he did not have the skills that he claimed.

There were a number of admissions made by the applicant which according to Counsel for the respondent reflect upon his credibility. They relate to his employment at Satay House, to his denial of working with Boonruang before 8 April and his later admissions that he had so worked. He made claims about English language when it is clear that he was not in a position to do so. His admissions that Boonruang, Henry and Val had told him what to do. The evidence of Boonruang was that "he was slow, we had to train him and tell him what to do. He cooked for the staff and some of his cooking was not good." Similar things were said by Mr Tan, the chef from Satay House as they were by Val. It was the respondent's suggestion that the cooking test which led to the engagement at Satay House was not in fact done by the applicant but by his wife. Satay House only considered him as an employee after his wife was refused a visa and hired him on a recommendation without testing, but he was dismissed because he could not do the work he said he could do and that situation was repeated at Thai On The Hill. The applicant was given fair warning that the contract would be bought to a close when Henry gave him notice that he had four weeks to perform at the level that he claimed he could. As a consequence he knew well that his dismissal had nothing to do with the amount of money involved in paying him but was related entirely to his ability to carry out the work required by the respondent.

Before I discuss the witness evidence and make findings on credibility I need to briefly canvass the law involved.

It is for the applicant to establish that the dismissal was in all these circumstances unfair. The test for ascertaining whether a dismissal is harsh, oppressive or unfair is that outlined by the Industrial Appeal Court in *Undercliff Nursing Home v. Federated Miscellaneous Workers Union of Australia* (1985) 65 WAIG 385. The question to be answered is whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the Act may still be unfair if, for example, it is effected in a manner which is unfair but if the employment has been terminated in a manner which is procedurally irregular that will not of itself necessarily mean the dismissal is unfair (*see Shire of Esperance v. Mouritz* (1991) 71 WAIG 891 and also *Byrne v. Australian Airlines* (1995) 65 IR 32). In *Shire of Esperance v. Mouritz*, Kennedy J also observed that whether an employer in bringing about a dismissal adopted procedures which were fair to the employee, is but an element in determining whether the dismissal was harsh or unjust.

I now comment on the witness evidence. As I have mentioned earlier in these Reasons the applicant has no English and it was necessary to have him assisted by an interpreter during the proceedings. This was complicated by the need to interpret from English to Thai to Mandarin Chinese to accommodate the witnesses who appeared on behalf of the respondent. Therefore in some circumstances there was considerable opportunity for the meaning to be diminished in the translation process. I have tried as best I can to take that into account when assessing witness credit. I am unable to say that I find anything adverse concerning the applicant's evidence, however he is a person who is subject to considerable pressure because his work visa has expired and it is likely that he may not be able to remain in Australia if he has not got work under the sponsorship scheme. I am not saying that there is any particular part of his evidence that I believe he had deliberately attempted to mislead the Commission, but I can say that I have developed the impression that he had a particular view about his own worth. He regarded the additional duties to cooking as being demeaning and it is apparent that he did not do those tasks in good grace. These were tasks that each of other

witnesses told me were part and parcel of the work of a chef in the type of working environment that exists in Thai restaurants in Western Australia. I also have no doubt that he was not as punctual as he might have been. It was alleged that he had other work driving for clients of the Burswood Casino. If this is true, it may have affected his ability to attend for work.

I heard evidence from Mr Somchai Siriburana (also known as Henry), I have no reason to doubt the evidence that he gave to the Commission although I developed the impression that he would be a reasonably hard task master. I heard from Boonruang and the witness known as Val as well as Tan and Mr Edward Lim. The latter two witnesses referred to the events at Satay House. I see no reason to disbelieve their evidence or the evidence of Val who worked side by side with the applicant at Thai On The Hill. In the circumstances I am of the view that the evidence of the witnesses for the respondent is likely to be more reliable than that of the applicant who could produce no corroboration apart from that given him by Master Wichian Jantaraha concerning his cooking skills. That evidence, I might say, is not strong, I think that at best Master Wichian told the Commission that he had taught the applicant but it did not appear from his evidence that he had any recent knowledge of him as a working chef. On balance I have concluded the evidence of the respondent is to be preferred.

The issues are therefore simple. I am to decide whether that on the tests set out in the Undercliffe Case (Supra) there has been a fair go to the applicant here. I am able to conclude on the balance of probabilities that he was not possessed of the skills that he held himself out to possess when he made the arrangement with Henry to work in his restaurant at Thai On The Hill. He was given an adequate trial to see whether he could learn the necessary skills. He was assisted in that respect, he was unable for reasons I am not able to identify, to reach the standards that were necessary to meet the requirements of the employer and the employer was entitled to dismiss him for that deficiency. It is not for me to speculate on the repercussions of the outcome if this case for the applicant's residency in Australia. That is for others to determine in accordance with the law. My role is to apply the established tests to determine whether there has been harshness or unfairness in the dismissal. On the balance of probabilities the applicant has not convinced me that there was and the application will be dismissed.

The applicant also made claims concerning an amount of money said to be owing because he was on a fixed term contract. There was no evidence led during the case at all concerning the existence of such a contract. Nor was there any evidence led concerning the alleged contractual entitlement to a return airfare to Thailand. I add that during the proceedings, the Commission viewed the application which had been made by the applicant concerning a similar case against Satay House, it is interesting to note that the claim for money was in exactly the same terms in both of the applications. It appears there was no discussion at all concerning any fixed term or return airfares to Thailand. The applicant has not proved to me that there was an entitlement due to him under a contract at the completion of his contract of employment and his claim in those respects will also be dismissed. Orders will issue dismissing both the claim for unfair dismissal and for contractual entitlements.

Appearances: Mr Pakorn Siriyakul appeared on his own behalf.

Mr Ian Wilson (of Counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pakorn Siriyakul

and

Sala Thai Trading Co Pty Ltd.
T/A Thai On The Hill Restaurant.

No. 865 of 1997.

COMMISSIONER J F GREGOR.

5 September 1997.

Order.

Having heard Mr P Siriyakul on behalf of the first named party and Mr I Wilson on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the application be and is hereby dismissed.

(Sgd.) J. F. GREGOR,

Commissioner.

[L.S.]

**CONFERENCES—
Matters arising out of—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch

and

Eagle Crest Foods.

No. C 230 of 1997.

21 August 1997.

Order.

WHEREAS this matter was the subject of conciliation proceedings pursuant to section 44 of the Industrial Relations Act, 1979 ("the Act") on 19 August 1997; and

WHEREAS the parties agreed on the terms of a consent order to issue; and

WHEREAS having regard for the objects of the Act and the views of the parties;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 and specifically section 44(6)(ba)(i), (ii) and (iii), and by consent, do hereby order—

THAT the parties shall be bound by the terms of the following schedule for a period of six (6) months on and from the 21st day of August 1997.

(Sgd.) S.A. CAWLEY,

Commissioner.

[L.S.]

Schedule.

A. It is noted that the respondent stated on 19 August 1997 at a conciliation conference pursuant to section 44 of the (WA) Industrial Relations Act, 1979 that it intended to reopen its operations as soon as possible/practical.

B. The union and the respondent agree that for the term of this order, the following shall apply.

(1) The rates of pay will be as follows—

(a) New employees on probation for 1 month—\$9.55 gross per hour.

(b) Employees with service of 1-3 months—\$9.70 gross per hour.

- (c) Employees with service of 3-12 months—\$10.00 gross per hour.
- (d) Employees with more than 12 months service—\$10.30 gross per hour.
- (e) Supervisor—\$10.90 per hour.

[These are the only rates and positions to apply save for the position of manager which is not a subject of this order.]

(2) In addition to the gross hourly wage rate the bonus scheme which has applied will be applied.

(3) In addition to the gross hourly wage rate, superannuation will apply as required by law.

(4) On re-opening its business, the respondent will re-employ those persons who were employed at any time in the week beginning 11 August 1997 in each instance to carry out work in the usual location and on the usual hours basis that had applied in the premises. Existing service is to apply for the purposes of gross hourly rate to be paid to each of the employees concerned.

(5) The parties agree that the term of the interim order will be 6 months.

(6) The respondent will not pursue further prior to 31 January 1998 the prospect of registered workplace agreements with any of the employees who worked in the week commencing 11 August 1997.

(7) The union will file for an award but will not seek to progress that with the employer or through proceedings in an industrial tribunal prior to 31 January 1998 but reserves its rights to communicate with its members on the matter of the possible issue of an award and the conditions within it.

(8) The union acknowledges that the issue of this order and its terms is not to be construed as an impediment for the respondent to sell, reorganise or otherwise restructure its business at any time.

It is noted —

- (a) that the parties acknowledge that this agreement has no bearing on the claim of unfair dismissal filed by a person in attendance at the conference and the respective rights and positions of the parties to that application are unaffected.
- (b) That the respondent has undertaken to contact each of the persons affected by telephone as soon as possible as to when the respondent's business is to reopen/and they are to resume their usual hours and conditions subject to the rates in the order.

CONFERENCES— Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch,
Industrial Union of Workers

and

WMC Resources Ltd.

No. CR 405 of 1996.

19 August 1997.

Reasons for Decision.

This matter is a claim by the union that the termination of Mr John Anderson on the 27th March, 1996 for unlawfully possessing Western Mining Company property was harsh, oppressive or unfair. When the matter came on for formal hearing the respondent raised two preliminary matters. The first is a submission that section 23A of the Act precludes the Commission ordering either reinstatement or compensation in

this matter because that section permits the Commission only to make such an order in relation to a "claimant" and the claimant in this matter is the union and not Mr Anderson. The second matter is a submission that the Commission should exercise its powers pursuant to section 27(1) of the Act and refrain from further dealing with this matter because it is no longer in the public interest due primarily to the passage of time since the dismissal occurred.

Section 23A

Section 23A was inserted into the Act by the amending Act No. 15 of 1993. It came into operation on the 1st December, 1993. It was further amended in May 1995 following the amending Act No. 1 of 1995. Section 23A in its current form is as follows—

"23A. (1) On a claim of harsh, oppressive or unfair dismissal, the Commission may —

- (a) order the payment to the claimant of any amount to which the claimant is entitled;
 - (b) order the employer to reinstate or re-employ a claimant who has been harshly, oppressively or unfairly dismissed;
 - (ba) subject to subsections (1a) and (4), order the employer to pay compensation to the claimant for loss or injury caused by the dismissal; and
 - (c) make any ancillary or incidental order that the Commission thinks necessary for giving effect to any order made under this subsection.
- (1a) The Commission is not to make an order under subsection (1) (ba) unless it is satisfied that reinstatement or re-employment of the claimant is impracticable.
- (2) An order under subsection (1) may require that it be complied with within a specified time.
- (3) If an employer fails to comply with an order under subsection (1) (b) the Commission may, upon further application, revoke that order and, subject to subsection (4), make an order for the payment of compensation for loss or injury caused by the dismissal.
- (4) The amount ordered to be paid under subsection (1) (ba) or (3) is not to exceed 6 months' remuneration of the claimant, and for the purposes of this subsection the Commission may calculate the amount on the basis of an average rate received during any relevant period of employment."

The respondent's submission is that when the Commission has before it a claim of harsh, oppressive or unfair dismissal, section 23(3)(h) prevents the Commission from making any order except an order authorised by section 23A. Section 23A provides that any order made by the Commission requiring the payment of entitlements, ordering reinstatement or re-employment or ordering the employer to pay compensation must be directed to paying, or reinstating, or compensating the claimant. In this matter, the claimant is Mr Anderson's union. The union does not have any "entitlements" due to it and cannot be reinstated or compensated in lieu of reinstatement. The respondent states that section 23A envisages that the claimant must be the individual employee who is bringing the claim of harsh, oppressive or unfair dismissal. The submission is that section 23A is worded so that a claim of harsh, oppressive or unfair dismissal is only to be brought to the Commission under section 29(b)(i) of the Act by an employee. This is said to be consistent with the Act's amendment in section 29(2) which provides that such a claim must be brought within 28 days of dismissal where it is brought by the employee. The submission is that the 28 day limitation does not apply to a claim of harsh, oppressive or unfair dismissal referred to the Commission by a union because the claim is not able to be dealt with by an order that the employee be paid an entitlement, reinstating the employee, or ordering payment of compensation to the employee. To put it another way, a claim of harsh, oppressive or unfair dismissal may be

brought to the Commission by the employee's union, but the Commission is without power to deal with it by way of ordering payment to the employee of an entitlement, reinstating the employee, or ordering payment of compensation to the employee.

The respondent reads the word "claimant" in section 23A so that it is restricted to the identity of the person making the claim. That reading does not take into account the special status of registered organisations under the Act. Section 53 of the Act prescribes that an unregistered organisation of not less than 200 employees associated for the purpose of protecting or furthering the interests of employees may be registered. Section 29(1) of the Act prescribes that an industrial matter may be referred to the Commission by an organisation in which persons to whom the industrial matter relates are eligible to be enrolled as members. Thus, a registered organisation is not merely a principal in its own right by virtue of its registration, it is also a representative of its members. Part of its function is to protect and further the interests of employees who are its members. It may make an application in the Commission on behalf of a member for that purpose. If it does so the application is made in its own name as in this case. But it makes the claim to protect and further the interests of its member. In such a circumstance it seems an absurdity to state that section 23A is to be read as the respondent now suggests.

The representative nature of registered organisations and the ability of those organisations to act on behalf of their members, either as individual members or as a class of members, is a fact of long standing: *Burwood Cinema Ltd v. Australian Theatrical and Amusement Employees Association* (1925) 35 CLR 528 at 551. A claim that an employee has been harshly, oppressively or unfairly dismissed is an industrial matter: *Kwinana Construction Group v. ETU* (1954) 34 WAIG 51. Changes to the Act subsequent to that decision have not altered that authority. An industrial matter may be referred to the Commission by a registered organisation in which persons to whom the industrial matter relates are eligible to be enrolled as members: s 29(1)(a)(ii). The Commission undoubtedly has the power to order reinstatement or re-employment when a claim of unfair dismissal is referred to the Commission by a union: *Kwinana Construction Group*. Prior to the decision in Peplar's case (*ADSTE v. RRIA* (1987) 68 WAIG 11) it was thought that the Commission also had the power to order that an employer pay compensation to an unfairly dismissed employee in lieu of reinstatement or re-employment. The decision in Peplar was to the contrary view: the Commission did not have that power. However, the decision in Peplar did not remove the power of the Commission to order reinstatement or re-employment when a claim of unfair dismissal was referred to the Commission by a union. The insertion of section 23A was to restore the power of the Commission to order that an employer pay compensation to an unfairly dismissed employee in lieu of reinstatement or re-employment. The respondent's submission means that the insertion of section 23A also removed the power of the Commission to order reinstatement or re-employment when the claim of unfair dismissal is referred to the Commission by the employee's union.

I would have thought that if the Parliament had intended that the power of the Commission to order reinstatement, or to order compensation in lieu of reinstatement, would be removed where the claim was brought by the employee's union, it would have plainly said so. The respondent drew to the Commission's attention the second reading speech to the Industrial Legislation Amendment Bill in November 1994 (Hansard 23rd November 1994, p.7435). There is no suggestion in that speech that the Minister intended anything other than "restoring" to the Commission the power to order that an employer pay compensation in lieu of reinstatement or re-employment to an employee who had been unfairly dismissed following the decision in Peplar's case. The fact that Parliament did not plainly say the power of the Commission to order reinstatement, or to order compensation in lieu of reinstatement, would be removed where the claim was brought by the employee's union renders the respondent's submission implausible. The decision in Peplar's case went only to the power to award compensation and indeed, Peplar's case was a claim referred to the Commission by his union. "Restoring" the power to order compensation in that context "restores" the power of the Commission to order compensation where the claim is brought

by the employee's union. It follows that there is nothing in the second reading speech which would support the restricted reading the respondent now urges of the word "claimant".

Further, I note that section 23A in its original form in 1993 was as follows—

"23A. (1) On a referral to the Commission of a claim of harsh, oppressive or unfair dismissal under section 29(b)(i), the Commission may"

(my emphasis).

Similarly, section 23(3)(h) originally restricted the orders which may be made by the Commission to a claim brought under section 29(b)(i), that is, a claim brought by an individual employee. Parliament appears to have recognised that when a claim of harsh, oppressive or unfair dismissal is referred to the Commission by a union, the claim is not brought under section 29(b)(i). In the 1995 amendment to the Act the reference in sections 23A and 23(3)(h) to a claim being brought "under section 29(b)(i)" was deleted. The effect of the deletion is to refer to a claim of harsh, oppressive or unfair dismissal whether or not it is referred under section 29(b)(i) of the Act. I think that is fatal to the respondent's submission because the deletion would not have been necessary if the word "claimant" is to be read as it now urges. It is not to be read that way at all.

This Act has been amended frequently, and in somewhat of a piecemeal fashion and, as Parker J. observed in another matter, there are a number of difficulties in the construction of the Act which seem likely to have arisen from the somewhat piecemeal development of some of its provisions (*Fisher Catering Services Pty Ltd and Another v. ALHMWU* (1997) 77 WAIG at 616). I think this is another example of those difficulties. In interpreting section 23A, the Commission should promote a construction that will promote the purpose or object underlying the Act whether that purpose or object is expressly stated or not. The long title of the Act suggests that it is to consolidate and amend the law relating to the rights and duties of both organisations and employees. Object 6(e) of the Act cites as a principal object the encouragement of the formation of representative organisations of employees. The manner by which the claim that Mr Anderson was harshly, oppressively or unfairly dismissed is referred to the Commission is a matter of form and not substance. The Commission will have the claim before it whether it is brought by Mr Anderson's union or by Mr Anderson himself. In substance, it will be the same matter. In the exercise of its jurisdiction, the Commission shall act according to equity, good conscience and substantial merit without regard to technicalities or legal forms. The manner by which Mr Anderson's application is referred to the Commission does not, to me, seem of significance.

This leads, inevitably in my view, to the conclusion that the "claimant" referred to in section 23A is not restricted to the person making the claim. Where the claim is referred to the Commission by the employee's union the "claimant" means the employee to whom the industrial matter relates. I therefore find that on a proper reading of section 23A, the Commission is able to make an order as envisaged by that section in this matter. I reject the respondent's submission.

Section 27

The submission that the Commission should exercise its discretion under section 27 of the Act and refrain from further dealing with this matter, necessitates an examination of the background. Mr Anderson was employed from July 1992 until his dismissal on the 27th March 1996. On the 1st April the union filed Application C132 of 1996 in the Commission. That application sought a conference concerning the claim of the union that the dismissal was harsh, oppressive or unfair and seeking Mr Anderson's reinstatement. When the conference was convened before Halliwell SC., the union became aware that Mr Anderson was charged with stealing as a servant, as well as charges relating to cultivating cannabis with intent to sell and supply and possession of cannabis. The proceedings were adjourned "pending the outcome of the criminal charges" (Exhibit 1, paragraph 9). In early December 1996 the union received advice from Mr Anderson that he had been found to have no case to answer in relation to the charges of stealing as a servant and the union sought to reactivate the application. It is a fact that the application was closed administratively in August 1996. That then led to the filing of this application on the 17th December 1996.

The respondent also notes that on the 25th October 1996 it ceased to employ persons to conduct its mining operations and that reinstatement is therefore impracticable.

It is the case that a claim of unfair dismissal should be dealt with promptly. The Commission has held so on many previous occasions. However, the Commission must have regard to the circumstances of each case. Here, the union took prompt action on the part of Mr Anderson following his dismissal. It lodged application C132 of 1996 within five days of the dismissal. The Company was aware therefore that the reason for his dismissal was challenged by Mr Anderson. The Company was also aware that proceedings were adjourned to await the outcome of the criminal matter. Following the determination of the criminal matter the union sought promptly to reactivate the proceedings and for that purpose this application was lodged. There has been no unnecessary delay by the union in having the claim proceed before the Commission. Reinstatement is not sought due to the Company no longer employing persons in the classification of Mr Anderson. Therefore the difficulties which would inevitably arise in the Commission giving consideration to a claim of reinstatement 15 months after the event do not arise here. If Mr Anderson was unfairly dismissed a claim of compensation is still available to him as a remedy.

The strongest argument in the respondent's favour at this stage is that the passage of time would have dimmed the memories of the persons involved. Indeed, the respondent made that precise submission. It also added that due to the Company contracting out its operations the respondent might have difficulty in obtaining the necessary persons to give evidence on its behalf. Whilst I have some sympathy for that position, the Commission's attention was not drawn to an actual prejudice suffered by the respondent. For example, it was not submitted that a key witness had suffered such an illness that his memory would be affected (*Culverhouse v. John Septimus Roe* (1995) 75 WAIG 1960) or that a key witness had died (*Jose v. Milne Feeds Pty Ltd* (1996) 76 WAIG 2459). The Company's position is potentially, but apparently not actually, prejudiced. That is insufficient to dismiss this application at this stage.

To dismiss an applicant's claim because of the delay in proceeding with the matter is a serious event. I have not been persuaded that the Commission should refrain from hearing this matter. The Commission should take into account not just the circumstances raised by the respondent but also the circumstances of Mr Anderson. The record indicates that he was dismissed because he was unlawfully in possession of Company property. That is a serious matter and I am prepared to assume that is in Mr Anderson's interest to have the issue of whether his dismissal was fair or unfair examined by the Commission.

The respondent also points to Mr Anderson's plea of guilty in relation to the charges relating to cultivating cannabis with intent to sell and supply and possession of cannabis. It submits that on the authority of the Full Bench in *WMC v. AWU* ((1977) 77 WAIG 1079) the fact of Mr Anderson's conviction for those offences renders any further proceedings in relation to his dismissal futile. However the facts of the matter before the Full Bench were that—

the employee was found in possession of a prohibited drug and a deleterious drug on a mining lease, and taking into account that he had committed a crime and could have been charged under the *Mines Safety and Inspection Regulations 1995*, and that the drug was a deleterious one, that he was not denied procedural fairness, that he committed a crime which involved the likelihood of use by him or others at the place where they worked, that possession of the same was forbidden by law at or on a mine, that that was the law was drawn to the attention of all of the employees at St Ives Gold Mines, all led to the conclusion that the crime of possession itself was enough to render the dismissal fair.

(at p.1084)

That is not said to be the case here and the difference in the facts leads me to the conclusion that the decision of the Full Bench is not applicable to this matter. Indeed, my consideration of this matter is very much limited only to the issues raised by the respondent. I have not been given the opportunity, on the

limited issues before me, to consider any other aspects of the claim.

I have not been persuaded that the application should be discontinued at this stage and accordingly it will be restored to the list for further hearing.

Appearances—

Mr M. Lourey on behalf of the applicant.

Mr R. Lilburne (of counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia
Incorporated

and

Agriculture Western Australia.

No. PSACR 66 of 1996.

11 August 1997.

Order.

HAVING heard Mr E. Rea on behalf of the Applicant and Mr D. Eacott on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

- (1) THAT Rosemary Rippon be transferred to the Animal Health Laboratories Services Group;
- (2) THAT all current restrictions relating to her fitness to work in the laboratories environment be removed; and
- (3) THAT Ms Rippon be afforded the same opportunities as other Program Services Consultants.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch

and

Honourable Minister for Education.

No. CR 143 of 1997.

12 August 1997.

Direction.

HAVING heard Ms D. MacTiernan on behalf of the Applicant and Ms A. Johnson (of counsel) on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

- (1) The respondent to supply a copy of Ms Nicholas' personnel file, or if there is no such file, a copy of Ms Nicholas' application for employment, any offer of employment by the employer, acceptance of employment or any document relating to the terms of her employment;
- (2) The respondent to supply a copy of all applications and approvals of Ms Nicholas' annual leave travel concessions;
- (3) The respondent to supply a copy of any departmental circular or policy relating to annual leave travel concessions applicable to the period of Ms Nicholas' employment.

- (4) The respondent to supply a copy of any Government or Department of Productivity and Labour Relations written policy or instruction on annual leave travel concession applicable to the period of Ms Nicholas' employment.

[L.S.] (Sgd.) A.R. BEECH,
Commissioner.

CORRECTIONS—

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Western Australian Mint.

No. 403 of 1997.

Western Australian Mint Security Officers' Award 1988
No. A5 of 1988.

CHIEF COMMISSIONER W.S. COLEMAN.

18 August 1997.

Correcting Order.

WHEREAS an error occurred in the drafting of the above Order dated 4 July 1997, published in the Western Australian Industrial Gazette on Wednesday 23rd July 1997, Volume 77, Part 2, Sub-part 1, Page 1735, the following correction is made—

Delete the operative date of the Order and replace with the following—

17 June 1997

[L.S.] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

CORRIGENDUM—

Whereas a printing error occurred in the publication of Application No. 1375 of 1997 and of Order No. 1375 of 1996 in the *Western Australian Industrial Gazette* dated the 27 August 1997, Volume 77, Part 2, Sub Part 2 at page 1990, the correct notice and order are republished hereunder.

Dated at Perth this 10th day of September 1997.

(Sgd.) J.A. SPURLING,
Registrar.

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 1375 of 1997.

IN THE MATTER of the Industrial Relations Act 1979
and

IN THE MATTER of the filing in the office of the Registrar of the Notice of Retirement from Industrial Agreement in accordance with section 41(7) of the said Act

The Department of Community Services and Others will cease to be parties to the Facilities Agreement 1992 No. PSAAG 2 of 1992 on and from the 29th day of August 1997.

Dated at Perth this 30th day of July 1997.

J.A. SPURLING,
Registrar.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Calvin Leslie Potter
and

Peter John Clark.

No. 1375 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

14 February 1997.

Order.

THIS matter was called on the Commission's Own Motion for Mention on 14 February, 1997 pursuant to Regulation 76, sub-regulation (3) of the Industrial Relations Act, 1979;

AND WHEREAS notification of these proceedings were sent to the parties in accordance with the Regulations of the Industrial Relations Act, 1979;

AND WHEREAS there was no appearance on behalf of either party;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this matter is dismissed pursuant to Section 27(1)(a) of the Act for want of prosecution.

[L.S.] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

NOTICES— Cancellation of Awards/ Agreements/Respondents— Section 47—

NOTICE.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following party/respondent to the

Building Trades (Government) Award 1968,
No. 31A of 1966

namely

Western Australian Meat Commission

on the grounds that the respondent is no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Part 185 on all correspondence.

Dated 8 September 1997.

J. SPURLING,
Registrar.

NOTICE.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following party/respondent to the Cleaners and Caretakers Award 1969, No. 12 of 1969 namely—

Lynas Motors Pty Ltd

on the grounds that the respondent is no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Part K on all correspondence.

Dated 8 September 1997

J. SPURLING,
Registrar.

NOTICE.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to cancel out the following awards, namely the

1. Engine Drivers (North West Abattoirs) Award No. 4 of 1969
2. Engine Drivers (Sawmills) Award No. 23 of 1952

on the grounds that there are no longer any persons employed under the provisions of the awards.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 686 of 1977 Parts 172 and 173 on all correspondence.

Dated 9 September 1997

J. SPURLING,
Registrar.

NOTICE.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following parties/respondents to the **Security Officers Award No. A25 of 1981** namely—

1. Anti-Crime Security Service
2. T.N.T. Group 4 Pty Ltd

on the grounds that the respondents are no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Part 154 on all correspondence.

Dated 8 September 1997.

J. SPURLING,
Registrar.

AWARDS/AGREEMENTS— Consolidation by Registrar—

THE ABORIGINAL POLICE AIDES AWARD. No. R 31 of 1979.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 12 th day of August, 1997

J. SPURLING,
Registrar.

*“The Aboriginal Police Aides Award”
No. R 31 of 1979*

1.—TITLE

This award shall be known as “The Aboriginal Police Aides Award”.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
3. Term
4. Area and Scope
5. Definitions
6. Salaries
7. District Allowances
8. Risk of Infection
9. Travelling Allowances
10. Relieving Allowances
11. Transfer Allowance
12. Allowance for Use of Employee’s Own Vehicle
13. Additional Allowances
14. Hours of Duty
15. Overtime
16. Shift Penalties
17. Annual Leave
18. Fares Whilst Travelling
19. Long Service Leave
20. Camping Allowance
21. Consultative Agreement
22. Award Modernisation
23. Adjustment of Reimbursement Allowances
24. Disturbance Allowance
25. Entitlement to Leave and Allowances through Illness or Injury.
26. Medical and Hospital Expenses through Illness or Injury resulting from Duties.
27. Medical and Pharmaceutical Expenses.
28. Retirement, Removal or Death of an Employee.
29. Named Parties

3.—TERM

This Award shall operate for a period of three years from the date hereof.

4.—AREA AND SCOPE

This Award shall apply to all Aboriginal Police Aides and shall operate over the whole State.

5.—DEFINITIONS

“Camp of a Permanent Nature” for the purposes of Clause 20.—Camping Allowance means single room accommodation in skid mounted or mobile type units, caravans, or barrack type accommodation or a vessel where the following are provided in the camp—

- water is freely available;

- ablutions including a toilet, shower or bath and laundry facilities;
- hot water system;
- a kitchen, including a stove and table and chairs, except in the case of a caravan equipped with its own cooking and messing facilities;
- an electricity or power supply; and
- beds and mattresses except in the case of caravans containing sleeping accommodation.

For the purposes of this definition caravans located in caravan parks or other locations where the above are provided shall be deemed a camp of a permanent nature.

“Camp other than a Permanent Camp” for the purposes of Clause 20.—Camping Allowance means a camp including a vessel where any of the requirements defined in “Camp of a Permanent Nature” are not provided.

“Centre” means any station from which continuous duty is performed.

“Commissioner” means the Commissioner of Police appointed pursuant to the provisions of the Police Act.

“De-facto Spouse” means a person of the opposite sex to the employee who lives with the employee as the husband or wife of the employee on a bona-fide domestic basis, although not legally married to the employee.

“dentist” has the same meaning as it has in the Dental Act 1939.

“Dependant” in relation to an employee (other than for the purposes of District Allowance) means—

- (a) spouse, including de-facto spouse;
- (b) child/children; or
- (c) other dependent family;

who reside with the employee or who rely on the employee for main support.

“Dependant” in relation to an employee (for the purpose of District Allowance) means—

- (a) spouse; or
- (b) where there is no spouse, a child or any other relative resident within the State who rely on the employee for their main support;

who does not receive a district or location allowance of any kind.

“Distance Rate” means the rate per kilometre applicable in the North West of the State that is prescribed by the Award under Clause 13—Allowance for use of Employee’s Own Vehicle as payment to an employee for the use by the employee of the employee’s vehicle for the performance of police duties.

“Emergency” means—

- (a) an unforeseen urgent crisis;
- (b) a serious public disorder; and
- (c) searches;

but shall not include normal police activity or the prevention of payment of any penalty provision covered by this award or normal police duty or a requirement to attend court outside a rostered shift.

“Family” in relation to an employee means the employee, spouse and all dependent children attending school and to those dependent children living with the employee who are un-employed.

“Headquarters” means the place in which the principal work of an employee is carried out, as defined by the Commissioner.

“House” for the purposes of Clause 20.—Camping Allowances means a house, duplex or cottage including transportable type accommodation which are self contained and in which the facilities prescribed for a “camp of a permanent nature” are provided.

“incapacity” means unfitness for and absence from duty as a result of illness or injury and “incapacitated” shall be construed accordingly.

“Manager” means the Manager of the Occupational Health, Safety and Welfare Unit of the Department.

“medical practitioner” has the same meaning as it has in the Medical Act 1894.

“Medicare benefits” has the same meaning as it has in the Health Insurance Act 1973 of the Parliament of the Commonwealth.

“Metropolitan Area” means all of that area within a fifty (50) kilometre radius of the Perth City Railway Station.

“Motor Vehicle Allowances”

The following expressions shall have the following meaning in respect of motor vehicle allowances—

- (a) “A year” means twelve months commencing on the 1st day of July and ending on the 30th day of June next following.
- (b) “Metropolitan Area” means that area within a radius of fifty (50) kilometres from the Perth City Railway Station.
- (c) “South West Land Division” means the south west land division as defined by section 28 of the Land Act, 1933-1972 excluding the metropolitan area and the south west land division.

“North-West” means all that part of the State north of the 26th parallel of latitude and shall be deemed to include Shark Bay.

“Part-time Employee” means an employee who is regularly employed to work less than thirty eight (38) hours per week.

“Partial Dependant” in relation to an employee (for the purpose of district allowance) means—

- (a) a spouse; or
- (b) where there is no spouse, a child or any other relative resident within the State who rely on the employee for their main support;

who receives a district or location allowance of any kind less than that applicable to an employee without dependants under any Award, Agreement or other provision regulating the employment of the partial dependant.

“pharmaceutical chemist” has the same meaning as it has in the Pharmacy Act 1964.

“Practicable” means practicable in the fair and reasonable opinion of the Commissioner: provided that if any dispute shall arise as to whether in any case such opinion is fair and reasonable, the matter in dispute shall be referred for determination to a Board of Reference established under Section 48 of the Industrial Relations Act.

“Public Event” shall be deemed to include the following: the Christmas/New Year Road Safety Campaign, Easter Road Safety Campaign, Channel 7 Christmas Pageant, Royal Agricultural Society Show, 96FM Sky Show, Bindoon Rock Festival, Anzac Day Services and Marches, City to Surf Fun Run, and/or similar such events.

“Public Interest” means—

- (a) protection of life or property caused by extraordinary events; or
- (b) security for Heads of State/Public Figures and special events; and
- (c) searches;

but shall not include normal police activity or the prevention of payment of any penalty provision covered by this award in normal police duty or a requirement to attend court outside a rostered shift.

“Public Transport” means any means of public transport approved by the Commissioner.

“region” means region of the State within the meaning of section 39(2) of the Police Act 1892.

“Special Area” means—

- (a) any portion of the State that is—
 - (i) east of longitude 119 degrees east; or
 - (ii) north of 26 degrees of south latitude;
- (b) Yalgoo, Mount Magnet, Cue and Meekatharra; and
- (c) any area outside the State designated a special area by the Minister.

“Spouse” means an employee’s spouse including de-facto spouse.

“Union” means the Western Australian Police Union of Workers.

6.—SALARIES

The rates of pay in this award include three safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements, or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(1) The rates payable in respect of the ordinary hours of duty shall be as prescribed hereunder—

	Existing Salary \$	1st, 2nd & 3rd Arbitrated Safety Net Adjustment \$	Total Salary P/A \$
Police Aide	26,884	1251	28,135
First Class Aide	27,946	1251	29,197
Senior Aide	30,487	1251	31,738

Hours worked in excess of forty (40) in a week on a voluntary basis at sporting or other public events shall be considered ordinary hours of duty and paid in accordance with the hourly rate prescribed in subclause (3) of this clause.

(2) Salaries shall be paid by direct funds transfer to the credit of an account nominated by the employee at a bank, building society or credit union approved by the Under Treasurer or an Accountable Officer.

Provided that where such form of payment is impracticable or where some exceptional circumstances exist, and by agreement between the Minister and the Union, payment by cheque may be made.

(3) (a) For the purpose of ascertaining the rate per fortnight the total annual salary shall be multiplied by 12 and divided by 313.

(b) For the purpose of ascertaining the rate per day the rate per fortnight shall be divided by 10.

(c) For the purpose of ascertaining the rate per hour the annual salary prescribed in subclause (1) of this clause shall be divided by three hundred and thirteen (313), multiplied by twelve (12) and divided by eighty (80).

(4) A part-time employee shall be paid a proportion of the appropriate full-time salary contained in this clause dependent on the number of ordinary hours worked. The salary shall be calculated in accordance with the following formula—

Hours worked per fortnight	X	Full-time fortnightly salary
80		1

7.—DISTRICT ALLOWANCES

District Allowances shall be paid in accordance with the scale in force from time to time in the Public Service of Western Australia.

8.—RISK OF INFECTION

An employee engaged in escorting persons suffering from leprosy shall be paid a special allowance of two dollars per day or part thereof whilst actually engaged in escorting such persons.

9.—TRAVELLING ALLOWANCES

An employee who travels on official business shall be reimbursed reasonable expenses on the following basis—

(1) When a trip necessitates an overnight stay away from headquarters and the employee is supplied with accommodation and meals free of charge, reimbursement shall be in accordance with the rates prescribed in Item 1, 2 or 3 of the Schedule attached hereto.

(2) When a trip necessitates an overnight stay away from headquarters and the employee is fully responsible for his/her own accommodation, meals and incidental expenses and hotel, motel or roadhouse accommodation is utilised reimbursement shall be in accordance with the rates prescribed in Items 4 to 8 of the Schedule attached hereto.

(3) When a trip necessitates an overnight stay away from headquarters and the employee is fully responsible for his/her own accommodation, meals and incidental expenses and accommodation other than camping or that covered in subclause (1) or subclause (2) of this clause is utilised, reimbursement shall be in accordance with the rates prescribed in Items 9 to 11 of the Schedule attached hereto.

(4) To calculate reimbursement under subclause (1), subclause (2) and subclause (3) of this clause for a part of a day, the following formulae shall apply—

(a) If departure from headquarters is—
before 8.00am—100% of the daily rate.
8.00am or later but prior to 1.00pm—90% of the daily rate.
1.00pm or later but prior to 6.00pm—75% of the daily rate.
6.00pm or later—50% of the daily rate.

(b) If arrival back at headquarters is—
8.00am or later but prior to 1.00pm—10% of the daily rate.
1.00pm or later but prior to 6.00pm—25% of the daily rate.
6.00pm or later but prior to 11.00pm—50% of the daily rate.
11.00pm or later—100% of the daily rate.

(c) The rate to be applied is that applicable for the locality/town in which the employee stays overnight, except for the final day or part thereof which is calculated at the rate for the previous overnight location.

(5) When a trip necessitates an overnight stay away from headquarters and the employee is provided with accommodation free of charge but only some or no meals free of charge, reimbursement for the appropriate breakfast, lunch or dinner not provided free of charge shall be in accordance with the breakfast, lunch or dinner rates prescribed in Items 12, 13 or 14 of the Schedule attached hereto.

(6) (a) (i) When an employee stationed in the metropolitan area travels to a place outside of that area or an employee stationed outside the metropolitan area who travels to a place outside a radius of twenty four (24) kilometres from the employee's headquarters and the trip does not involve an overnight stay away from headquarters, reimbursement for all meals claimed shall be at the rates set out in Item 12, 13 or 14 of the Schedule attached hereto, subject to the employee's certification that each meal claimed was actually purchased and consumed over a recognised meal period and the employee was outside of the respective area for the whole of the recognised meal period.

(ii) Provided that when an employee departs from headquarters before 8.00am and does not arrive back at headquarters until after 11.00pm on the same day the employee shall be paid at the appropriate rate prescribed in Items 4 to 8 of the Schedule attached hereto.

(b) For the purposes of this subclause—

(i) Where an ordinary hours shift is being worked the recognised meal break in that shift shall be forty (40) minutes in

the case of an eight (8) hour shift and on a pro rata basis where an ordinary hours shift of other than eight (8) hours is being worked. Such meal period to be authorised by the Officer in Charge to commence at some time within the 3rd, 4th or 5th hour of the shift and on pro-rata basis for ordinary hour shifts of other than eight (8) hours.

For an ordinary hours shift only one (1) meal may be purchased and consumed over the shift; and

- (ii) Where the travel extends beyond an ordinary hours shift—
- (aa) an employee travelling a minimum of ten (10) hours shall be entitled to a further meal break; and
- (bb) for each further five (5) hours travelled from the completion of the previous meal break, a further meal break.
- (iii) In determining the appropriate rate for the meal where the meal period falls between the span of hours in Column 1 the appropriate rate prescribed in Column 2 shall apply.

Column 1	Column 2
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6.00 a.m. or later but before 11.00 a.m.	breakfast
11.00 a.m. or later but before 4.00 p.m.	lunch
4.00 p.m. or later but before 10.00 p.m.	dinner
10.00 p.m. or later but before 6.00 a.m.	supper

- (7) (a) An employee stationed in the metropolitan area who is disadvantaged financially by additional travelling costs incurred due to a requirement to attend an Academy course for a period of five (5) days or more may be paid a special allowance.
- (b) Each claim is to be dealt with on its individual merits with the maximum allowable reimbursement being the rate prescribed in Item 1 of the Schedule attached hereto.
- (8) In addition to the rates contained in the Schedule attached hereto an employee shall be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.
- (9) If on account of lack of suitable transport facilities an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee shall be reimbursed the actual cost of such accommodation.
- (10) Reimbursement of expenses shall not be suspended should an employee become ill whilst travelling, provided such illness is recognised and approved in accordance with the provisions of the Police Force Regulations or this award and the employee continues to incur accommodation, meal and incidental expenses.
- (11) Reimbursement claims for travelling in excess of fourteen days (14) in one (1) month shall not be passed for payment by a certifying officer unless the Commissioner or his nominee has endorsed the account.
- (12) An employee stationed in the metropolitan area who is relieving at or temporarily transferred to any place within that area shall not be reimbursed the cost of meals purchased, but an employee travelling on duty within that area who for operational reasons is unable to return to headquarters for a scheduled meal and as a consequence is absent from his/her

headquarters over the specified meal period shall be paid at the rate prescribed by Item 15 of the Schedule attached hereto for each meal necessarily purchased, provided that—

- (a) a requirement to return to headquarters for a scheduled meal break would lead to additional travelling costs or cause lost working time due to travel which is in excess of the rate prescribed in Item 15 of the Schedule attached hereto;
- (b) such travelling is not within the suburb in which the employee resides; and
- (c) the employee's total reimbursement under this subclause for any one pay period shall not exceed the amount prescribed by Item 16 of the Schedule attached hereto.

A specified meal period for the purposes of this subclause shall be a meal period authorised by the Officer in Charge to commence at some time within the third, fourth and fifth hours of the employee's ordinary eight (8) hour shift.

- (13) An employee travelling on an aircraft (fixed or rotary wing) which travels outside a radius of fifty (50) kilometres measured from the employee's headquarters and returns to the place of departure without landing at another place shall not be entitled to any allowance under this clause unless the trip extends for a period in excess of four (4) hours and the employee certifies he/she purchased a meal for consumption on the trip. Where the aircraft lands at other than the departure point and the employee purchases and consumes a meal the provisions of this clause apply.
- (14) Where interstate travel is involved the time differences are to be disregarded for the purposes of calculating travelling allowances and Western Australian time is to be used in claiming allowances involving an overnight stay.
- (15) Where an employee claims reimbursement for meals or the daily rate specified for hotel or motel in Items 4 to 14 of the Schedule attached hereto the employee shall certify that the meals were purchased or hotel or motel accommodation was actually utilised. An employee may be required to produce receipts or other evidence to substantiate any claim. Meal allowances shall not apply where a meal is supplied without charge to an employee.
- (16) An employee shall only be paid one allowance for any one meal period.
- (17) When it can be shown to the satisfaction of the Commissioner by the production of receipts that reimbursement in accordance with the Schedule attached hereto does not cover an employee's reasonable expenses for a whole trip the employee shall be reimbursed the excess expenditure.

SCHEDULE OF TRAVELLING ALLOWANCES

ITEM	DAILY RATE \$
ALLOWANCE TO MEET INCIDENTAL EXPENSES	
1 WA—South of 26 degrees South Latitude	8.40
2 WA—North of 26 degrees South Latitude	9.55
3 Interstate	9.55
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT A HOTEL, MOTEL OR ROADHOUSE	
4 WA—Metropolitan	149.55
5 Locality South of 26 degrees South Latitude	120.65
6 Locality North of 26 degrees South Latitude	
Broome	191.30
Carnarvon	120.60

ITEM	DAILY RATE
	\$
Dampier	138.55
Derby	132.55
Eucla	125.50
Exmouth	142.55
Fitzroy Crossing	158.80
Gascoyne Junction	94.55
Halls Creek	163.55
Karratha	180.00
Kununurra	157.55
Marble Bar	119.55
Newman	184.55
Nullagine	106.50
Onslow	95.55
Pannawonica	120.55
Paraburdoo	197.55
Port Hedland	188.90
Roebourne	86.55
Sandfire	88.55
Shark Bay	122.75
South Hedland	188.90
Tom Price	152.55
Turkey Creek	93.55
Wickham	129.55
Wyndham	111.55
7 Interstate—Capital Cities	
- Sydney	170.25
- Melbourne	160.25
- Others	151.40
8 Interstate—Other than Capital Cities	120.65
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL, MOTEL OR ROADHOUSE	
9 WA—South of 26 degrees South Latitude	53.10
10 WA—North of 26 degrees South Latitude	60.30
11 Interstate	60.30
TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED	
12 WA—South of 26 degrees South Latitude	
Breakfast	10.15
Lunch	10.15
Dinner	24.40
Supper	14.90
13 WA—North of 26 degrees South Latitude	
Breakfast	11.50
Lunch	14.40
Dinner	24.90
Supper	16.95
14 Interstate	
Breakfast	11.50
Lunch	14.40
Dinner	24.90
MIDDAY MEAL	
15 Rate per meal	4.40
16 Maximum reimbursement per pay period	22.00
DEDUCTION FOR NORMAL LIVING EXPENSES	
17 Each Adult	18.25
18 Each Child	3.15
ACCELERATED DEPRECIATION AND EXTRA WEAR AND TEAR ON FURNITURE AND EFFECTS	
19 Accelerated Depreciation	477.00
20 Value of Goods	2,854.00

10.—RELIEVING ALLOWANCES

(1) An employee who is required to take up duty away from his/her usual headquarters within the Commonwealth of Australia on relief duty or to perform special duty and necessarily resides temporarily away from the employee's usual place of

residence shall be reimbursed reasonable expenses on the following basis—

- (a) Where the employee is supplied with accommodation and meals free of charge, reimbursement shall be in accordance with the rates prescribed in Item 7 of the Schedule attached hereto;
- (b) Where the employee is fully responsible for his/her own accommodation, meals and incidental expenses and hotel, motel or roadhouse accommodation is utilised;
 - (i) for the first forty nine (49) days after arrival at the new locality reimbursement shall be in accordance with the appropriate rate prescribed by items 1 to 4 of the Schedule attached hereto;
 - (ii) for the period in excess of forty nine (49) days after arrival at the new locality reimbursement shall be in accordance with the appropriate rate prescribed by Items 2 or 5 for employees with dependants or Items 3 or 6 for other employees. Provided that the period of reimbursement under this paragraph shall not exceed forty two (42) days without the approval of the Commissioner;
 - (iii) the employee is required to certify that he/she stayed at the accommodation outlined in the preamble of this paragraph for the period claimed and may be required to produce receipts or other evidence to support the claim.
- (c) Where the employee is fully responsible for his/her accommodation, meals and incidental expenses and accommodation other than that covered in paragraph (a) or paragraph (b) of this subclause is utilised and he/she is not camping in accordance with Clause 20.—Camping Allowance of this award the employee shall be reimbursed in accordance with Item 8 of the Schedule attached hereto.
- (d) Where the employee is provided with accommodation free of charge and only some or no meals free of charge reimbursement for the appropriate breakfast, lunch and dinner not provided free of charge shall be in accordance with the appropriate breakfast, lunch or dinner rates prescribed in Item 9, 10 or 11 of the Schedule attached hereto.
- (e) Where an employee who is required to relieve or perform special duties in accordance with the preamble of this subclause is authorised by the Commissioner to travel to the new locality in the employee's own motor vehicle, reimbursement shall be in accordance with the appropriate rate of hire as prescribed by Clause 12.—Allowance for use of Employee's Own Vehicle. Provided that the journey is by the shortest possible practical route the maximum reimbursement shall not exceed the cost of the fare by public conveyance which otherwise would be utilised for such return journey.

(2) The provisions of Clause 9.—Travelling Allowances or Clause 20.—Camping Allowance of this award shall not operate concurrently with the provisions of this clause so as to permit an employee to be paid more than one (1) allowance for the same period. Provided that where an employee is required to travel on official business which involves an overnight stay away from the employee's temporary headquarters the Commissioner may extend the period specified in paragraph (b) or paragraph (c) of subclause (1) of this clause by the time spent in travelling or camping.

(3) An employee who is directed to relieve another employee or to perform special duty away from the employee's usual headquarters and is not required to reside temporarily away from his/her usual place of residence shall, if not in receipt of a higher duties or special allowance for such work, be reimbursed the amount of additional fares paid by the employee in travelling by public transport to and from the place of temporary duty. Provided that reimbursement shall not exceed fifty (50) cents per day without the approval of the Commissioner.

(4) Where it can be shown by the production of receipts or other evidence that an allowance payable under this clause would be insufficient to meet reasonable additional costs

incurred the Commissioner may approve the payment of such reasonable additional costs incurred.

SCHEDULE OF RELIEVING ALLOWANCES

(a) HOTEL/MOTEL/ROADHOUSE

	RATE PER DAY		ITEM
	(i) WA Metropolitan	(ii) Locality South of 26 degrees South Latitude	
	\$	\$	
First forty-nine days after arrival at new locality:	149.55	126.05	1
Period of relief in excess of forty-nine days—			
(a) Employee with dependants	74.75	60.35	2
(b) Employee without dependants	49.80	40.20	3
(iii) Locality north of 26 degrees south latitude including Shark Bay—			
TOWN	ITEM 4 First 49 days after arrival at new locality	ITEM 5 Period of Relief in excess of 49 days	ITEM 6 Employee With Dependants
	\$	Employee With Dependants \$	Employee Without Dependants \$
Broome	191.30	95.65	63.70
Carnarvon	120.60	60.30	40.15
Dampier	138.55	69.25	46.15
Derby	132.55	66.25	44.15
Eucla	125.50	62.75	41.80
Exmouth	142.55	71.25	47.45
Fitzroy Crossing	158.80	79.40	52.90
Gascoyne Junction	94.55	47.25	31.50
Halls Creek	163.55	81.75	54.45
Karratha	180.00	90.00	59.95
Kununurra	157.55	78.75	52.45
Marble Bar	119.55	59.75	39.80
Newman	184.55	92.25	61.45
Nullagine	106.50	53.25	35.45
Onslow	95.55	47.75	31.80
Pannawonica	120.55	60.25	40.15
Paraburdoo	197.55	98.75	65.80
Port Hedland	188.90	94.45	62.90
Roebourne	86.55	43.25	28.80
Sandfire	88.55	44.25	29.50
Shark Bay	122.75	61.35	40.85
South Hedland	188.90	94.45	62.90
Tom Price	152.55	76.25	50.80
Turkey Creek	93.55	46.75	31.15
Wickham	129.55	64.75	43.15
Wyndham	111.55	55.75	37.15
(iv) INTERSTATE			
Capital Cities -			
-Sydney	170.25	85.15	56.70
-Melbourne	160.25	80.15	53.35
-Others	151.40	75.70	50.40
(v) INTERSTATE			
Other Than Capital Cities -	120.65	60.35	40.20
		RATE PER DAY	ITEM
		\$	
(b) Incidental expenses:			7
South of 26 degrees South Latitude		8.40	
North of 26 degrees South Latitude		9.55	
Interstate		9.55	
(c) Other Than Hotel or Motel:			8
South of 26 degrees South Latitude		53.10	
North of 26 degrees South Latitude		60.30	
Interstate		60.30	

(d) TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED

	RATE PER DAY	ITEM
	\$	
South of 26 degrees South Latitude		9
Breakfast	10.15	
Lunch	10.15	
Dinner	24.40	
North of 26 degrees South Latitude		10
Breakfast	11.50	
Lunch	14.40	
Dinner	24.90	
Interstate		11
Breakfast	11.50	
Lunch	14.40	
Dinner	24.90	

11.—TRANSFER ALLOWANCE

(1) Employees transferred from one headquarters to another—

- in the public interest; or
- in the ordinary course of promotion and transfer; or
- on account of illness due to causes over which the employee has no control,

shall, if the transfer necessitates a change in the place of residence of the employee, be paid allowances in accordance with the following provision of this clause.

(2) An employee when travelling on transfer in accordance with subclause (1) of this clause, shall be paid the appropriate rate of travelling allowances in accordance with Clause 9.—Travelling Allowances of this award.

(3) (a) In the case of an employee with dependants the allowance prescribed by subclause (2) of this clause shall be payable until the end of the day immediately following the day of arrival at his new headquarters.

(b) In addition, an employee with dependants who necessarily vacates his/her residence prior to departure for new headquarters shall be paid the appropriate travelling allowance from the time such employee necessarily vacates his/her residence (to be proved to the satisfaction of the Commissioner) until the time of such departure.

(c) The provision of paragraphs (a) and (b) of this subclause may be applied to an employee without dependants when the Commissioner considers that to establish the new residence it has been necessary for the Department to authorise the transport of the employee's household furniture, furnishings, domestic appliances and personal effects.

(4) Where an employee with dependants is transferred to headquarters at which quarters are not provided has not obtained reasonable accommodation for the transfer of his/her home at the expiration of the time for which travelling allowance is payable under subclause (3) of this clause, he/she shall be reimbursed actual reasonable accommodation and meal expenses for the employee and dependants less a deduction for normal living expenses at the rates prescribed in Item 17 and Item 18 of the schedule attached to Clause 9.—Travelling Allowances of this award until obtaining such reasonable accommodation. Provided that such reimbursement shall not be made—

- unless the Commissioner is satisfied that the employee has taken all reasonable steps to secure reasonable accommodation; and
- for a period exceeding seventy-seven (77) days.

(5) (a) Where an employee with dependants is transferred under the provisions of subclause (1) of this clause such employee shall be paid an allowance as prescribed in Item 19 of the schedule attached to Clause 9.—Travelling Allowances of

this award for accelerated depreciation and extra wear and tear on furniture, effects and appliances for each occasion that an employee is required to transport their furniture, effects and appliances, provided that the Commission is satisfied that the value of household furniture, effects and appliances moved by the employee is at least that prescribed in Item 20 of the schedule attached to Clause 9.—Travelling Allowances of this award.

(b) In the case of an employee without dependants an application for any reimbursement for accelerated depreciation and extra wear and tear on furniture and effects will be subject to the receipt by the employee of the allowance under paragraph (3)(c) of this clause and shall be considered by the Commissioner.

(6) Where it can be shown by the production of receipts or other evidence that an allowance payable under this clause would be insufficient to meet reasonable additional costs incurred by an employee on transfer appropriate reimbursement may be determined by the Commissioner.

(7) The lodging allowance prescribed in subclause (1) of Clause 13.—Additional Allowances of this award shall not be payable during any period for which reimbursement is made pursuant to subclause (4) and (6) of this clause.

(8) An employee shall be reimbursed the full freight charges necessarily incurred in respect of the removal of his/her motor vehicle.

(9) (a) Two employees who are married or living together as husband and wife on a bonafide domestic basis and who transfer as a family unit from one station to another in accordance with subclause (1) of this clause shall not be entitled to each claim allowances of this award as an employee with dependants.

(b) Where the couple share accommodation then only one of the employees shall receive the full appropriate travel allowance, whilst the other employee shall be paid an allowance for incidental expenses and meals (breakfast, lunch, dinner) as prescribed in the schedule in Clause 9.—Travelling Allowances of this award.

(10) (a) Subject to paragraph (b) of this subclause, when an employee who is required to transfer in accordance with subclause (1) of this clause decides to travel to the new residence in his/her own vehicle in lieu of the reimbursement provided for in subclause (8) of this clause, reimbursement shall be in accordance with the appropriate rate of hire as prescribed by Clause 12.—Allowance for use of Employee's Own Vehicle of this award.

(b) (i) the journey is by the shortest practical route;

(ii) the reimbursement does not exceed the cost of the fare of the employee's spouse and dependent children by public conveyance which otherwise would be utilised for such journey; and

(iii) where the employee's spouse and dependent children do not accompany the employee in the employee's own motor vehicle, the reimbursement does not exceed the cost of the employee's fare by the public conveyance.

(11) (a) When an employee is not transferred from one station to another as provided in subclause (1) of this clause but is required by the Commissioner to change residences in the same locality outside the metropolitan area, the provisions of subclause (5) of this clause shall apply (but no other provisions in this clause shall apply).

(b) The provisions of this subclause shall not apply to employees who change residences for personal reasons unless it can be established by the employee that the change in residence is beneficial to the Commissioner.

12.—ALLOWANCE FOR USE OF EMPLOYEE'S OWN VEHICLE

(1) An employee who is authorised to receive a car hire allowance because he is required to place his car at the disposal of the Police Department for the performance of normal Police Duties, shall be paid an allowance of ten dollars (\$10.00) per month for each calendar month he is so required.

(2) (a) An employee who is required to use his motor vehicle (car) for the performance of Police Duties shall be paid an allowance as per the following schedule—

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
	Rate per kilometre		
Metropolitan Area	49.4	43.5	37.9
South West Land Division	50.5	44.6	38.9
North of 23.5° South Latitude	56.2	50.0	43.5
Rest of the State	52.2	46.0	40.0

(b) An employee who is required to use his motor cycle for the performance of Police Duties shall be paid an allowance of 17.1 cents per kilometre necessarily travelled.

(c) Where vehicles are fitted with odometers registering in miles, the distance travelled must be converted to kilometres by multiplying the number of miles by 1.61.

13.—ADDITIONAL ALLOWANCES

(1) (a) Where an employee stationed in the metropolitan area is not provided with quarters, such employee shall be paid one hundred and forty-five dollars (\$145) per annum in lieu of quarters.

Provided that the provisions of this paragraph shall not apply in respect of any employee who commences employment on or after 1 March 1988.

(b) An employee stationed outside the metropolitan area and who is not provided with quarters shall be paid six hundred dollars (\$600) per annum in lieu of quarters.

(2) Employees detailed to carry out duties in civilian clothes for a period of five consecutive working days or more in any one calendar year shall be paid a clothing allowance at the rate of nine hundred dollars (\$900) per annum.

(3) Employees shall be paid a boot allowance of one hundred and forty dollars (\$140) per annum.

(4) Where a part-time employee is eligible for the payment of an allowance under this clause such allowance shall be calculated on the proportion of total hours worked by the employee in that year to the total standard hours had the employee been employed on a full-time basis for the year.

14.—HOURS OF DUTY

(1) (a) The ordinary hours of duty for employees shall average thirty eight (38) per week with the actual hours of work being forty (40) per week to be worked as eight (8) hours per day over any five (5) days of the week.

(b) An employee rostered off duty who returns on a voluntary basis for additional duty at sporting or other public events shall be paid at the hourly rate provided in subclause (3) of Clause 6.—Salaries of this award.

In such instances the other provisions of this award are suspended and the provisions of Clause 15.—Overtime of this award shall not apply.

In the event that cancellation of the sporting or other public event occurs within twelve (12) hours of the contracted starting time for the sporting or other public event, employees not previously notified of the cancellation will be compensated by payment of two (2) hours pay at the ordinary rate of pay.

(2) (a) For each ordinary eight (8) hour day worked employees shall accrue twenty four (24) minutes to be taken as accrued paid time off. Such accrued paid time off shall accumulate to a maximum of ninety six (96) hours in each twelve month period.

(b) The accrued time off shall be taken at a time mutually convenient to the employee and the Commissioner at any time during the year when such entitlement is due or where a mutually convenient time cannot be agreed at a time determined by the Commissioner. Where the accrued time off is not taken as above residual time shall be taken in a block in the following year either before or in conjunction with annual leave the first days of such leave shall be designated as being the accrued time off.

(c) Where an employee is required to return to work on a day allocated as accrued time off an alternative day shall be

allocated unless such time was shown on a roster posted in accordance with subclause (7) of this clause.

(d) An employee other than a commissioned officer who is required to return to work on a day allocated as accrued time off on a roster posted in accordance with subclause (7) of this clause shall be paid as a minimum payment at overtime rates for three (3) hours plus one (1) hour for travelling.

(e) Employees who—

- (i) resign or retire from the Force and have accumulated accrued time off but have not taken this time off shall be paid for the total accumulated hours on termination at the ordinary rate of pay; or
- (ii) terminate their employment and have taken accrued time off for which no entitlement has accrued shall have their salary reduced on termination by the total hours for which payment has been made out but for which the employee has no entitlement toward the accrued time off.

(f) The provisions of this subclause shall not apply to part time employees.

(3) (a) The ordinary hours of duty at a centre shall be worked in three shifts as set out hereunder which shall rotate weekly.

- (i) Day Shift—Any shift which commences on or between the hours of 6.00am and 10.00am each day.
- (ii) Afternoon Shift—Any shift which commences on or between the hours of 2.00pm and 6.00pm each day.
- (iii) Night Shift—Any shift which commences on or between the hours of 7.00pm and 12.00 midnight each day.

(b) At places other than a centre, shifts of eight (8) continuous hours shall be worked as required by local conditions provided—

- (i) where more than one (1) shift is worked each day such shifts shall alternate weekly;
- (ii) that due to local conditions at and in accordance with the safety and welfare requirements of the employees, additional employees may be rostered from day shift onto an afternoon shift or night shift in any week to cover known situations on particular days;
- (iii) such changes as prescribed in sub-paragraph (ii) of this paragraph shall be indicated in advance on rosters when rosters are posted in accordance with subclause (7) of this clause; and
- (iv) where employees are required to be rostered for day, afternoon and night shifts the afternoon and night shifts to be worked shall be distributed evenly between such employees.

(c) At non-centres where two employees are employed the daily hours may be worked as a broken shift—

- (i) if both employees apply in writing for permission to work such shift; and
- (ii) if both the Commissioner and Union agree.

(4) The starting times of shifts may be varied daily but must remain within the parameters of the identified day, afternoon or night shift.

(5) (a) Due to local conditions at non-centres and in accordance with the safety and welfare requirements of the employees, additional employees may be rostered from day shift on to afternoon or night shift to cover known situations on particular days.

(b) Such changes shall be indicated in advance on the rosters when the rosters are posted in accordance with subclause (7) of this clause.

(c) Liberty is reserved by the Union and the Commissioner to review its position in regard to the application of this particular subclause after the completion of six months' operation of the Award.

(6) Each ordinary shift shall include a meal period of forty (40) minutes which shall commence at a time within the 3rd, 4th and 5th hours of the shift. This meal period shall be considered as time worked.

(7) A roster shall be posted at each place of employment not later than 1.00pm on the Thursday preceding the week to be

worked showing shift duties and rest days for the ensuing week. Such roster may be varied or suspended by the Officer in Charge in an emergency or where such action is in the public interest.

(8) Subject to the provisions of this clause employees shall where practicable—

(a) be given twenty four hours' notice of any alteration of their roster shift,

(b) (i) Other than in an 'emergency'; as defined in this award an employee shall be allowed at least eight (8) consecutive hours off duty between the end of the ordinary shift and the commencement of the next ordinary shift.

(ii) Where an employee who has not had at least eight (8) consecutive hours off duty since the completion of his/her last ordinary shift is fatigued due to authorised overtime and there are four (4) hours or more of the next rostered shift remaining to be worked, the employee may, with the approval of his/her officer in charge, be excused from such part of the shift to allow the designated break and shall be deemed to have commenced that shift at the rostered start time. If a part shift is worked, a shift penalty, if appropriate, will be paid.

(iii) Where an employee who has not had at least eight (8) consecutive hours off duty since the completion of his/her last ordinary shift is fatigued due to authorised overtime and there are less than four (4) hours of the rostered shift remaining to be worked, the employee may, with the approval of his/her officer in charge, be excused from duty and shall be deemed to have worked the shift. However, in these circumstances, a shift penalty will not be paid.

(iv) Where the overtime incurred between ordinary shifts exceeds four (4) hours (and the employee has not had at least eight (8) consecutive hours off duty between the end of the ordinary shift and the commencement of the next), he/she may, with the approval of his/her officer in charge, be excused from the next rostered shift in lieu of the overtime incurred. In these circumstances, a shift penalty, if appropriate, will be paid.

(v) Overtime is to be documented in the usual way (e.g. court slip, report with overtime claim etc).

(vi) An employee seeking to be excused from their next rostered shift or part shift must personally contact his/her officer in charge or other person in authority for approval prior to the commencement of the shift. Such approval shall not be withheld except in an 'emergency' as defined.

(9) (a) The shift arrangements prescribed in subclause (3) of this clause may be varied to meet the needs of a particular station, non-centre or centre. Such changes must be premised on the understanding that the majority of the employees stationed in the section, station or branch must genuinely agree in accordance with the requirements of Clause 22.—Award Modernisation of this award.

(b) Such variation in shift arrangements may include any variation or combination of a minimum of six (6) and up to a maximum of ten (10) hour shifts and in excess of five (5) shifts in a week or forty (40) hours per week.

(c) Where shifts of other than eight (8) hours are worked, meal periods and commencement time of meal periods allowed under subclause (6) of this clause and shift penalties provided under subclause (3) of Clause 16. Shift Penalties of this award shall be allowed on a pro-rata basis according to the number of hours in a shift.

(10) (a) Notwithstanding other provisions contained in this clause, a part-time employee may be employed to work less than thirty eight (38) hours per week.

(b) An employee's regular part-time hours may be varied by the Commissioner with the consent of the employee and where

this occurs, time worked up to eight (8) hours on any day or a total of less than thirty eight (38) hours in a week or any arrangement under subclause (9) of this clause is not overtime but an extension of the contract hours for that day of the week.

(c) Other provisions apply on a pro rata basis.

(11) Where practicable, an employee should be allowed four (4) rostered weekends off duty over each period of twelve weeks.

15.—OVERTIME

(1) The Commissioner or any commissioned or non-commissioned officer may require employees to work reasonable overtime and employees shall work overtime in accordance with such requirements.

(2) (a) Overtime means all time worked in excess of—

(i) Forty (40) hours in a week or eight (8) hours on any day in the case of a full-time employee except for the arrangements provided in paragraph (c) of this subclause; and

(ii) Thirty eight (38) hours in a week or eight (8) hours on any day in the case of a part-time employee except for the arrangements provided in paragraph (c) of this subclause.

(b) Overtime shall be paid at the rate of time and one half for the first three (3) hours and double time thereafter.

(c) The provisions contained in paragraph (a) of this subclause shall not apply where other ordinary hours shift arrangements are being worked in accordance with subclause (9) of Clause 14.—Hours of Duty of this award. In such cases overtime shall be paid for periods in excess of the ordinary hours shifts being worked.

(3) An employee who is required to return to work outside his rostered hours of duty shall be paid the following minimum payments at overtime rates—

(i) on either of his weekly leave days, three hours plus one hour travelling time.

(ii) during any other off duty period two hours inclusive of any travelling time.

(4) Records of overtime shall be kept at each station and shall be available for inspection by the employee and the Secretary or any other paid employee of the Union.

(5) (a) Subject to the provisions of this subclause—

(i) an employee required to work a minimum of two (2) hours' overtime in conjunction with a rostered shift, shall be allowed a meal break of thirty (30) minutes at the completion of the first two (2) hours' overtime;

(ii) an employee required to work a minimum of four (4) hours' overtime when recalled to work outside his/her rostered shift, but not continuous to a shift, shall be allowed a meal break of thirty (30) minutes within five (5) hours thirty (30) minutes of the overtime commencing.

In each instance, the employee shall be entitled to further meal breaks of thirty (30) minutes after each further five (5) hours of overtime from the previous meal period.

(b) An employee having a meal break in accordance with paragraph (a) of this subclause may be required to remain under the discretion of a Senior Officer in Charge during such meal break and if so required the time shall be considered as time worked.

(c) (i) Where an employee has not been notified the previous day or earlier that the employee is required to work overtime, the employer shall provide the employee with a meal for each meal break the employee is entitled to, pursuant to paragraph (a) of this subclause.

(ii) Where the Commissioner fails to provide a meal and the employee certifies that a meal was purchased by the employee then six dollars and forty cents (\$6.40) shall be paid to the employee in lieu of each such meal.

(iii) Provided that where any meal break prescribed by paragraph (a) of this subclause is unable to be taken by the employee due to operational requirements and the employee forgoes such meal break in accordance with paragraph (b) of this subclause

a meal shall be provided by the Commissioner at the completion of the overtime or where no meal is supplied by the Commissioner and the employee certifies that a meal was purchased, the employee shall be paid six dollars and forty cents (\$6.40) in lieu of such meal.

(d) When an employee who has been notified the previous day or earlier that the employee is required to work overtime and such employee supplies him/herself with a meal which is then unable to be partaken due to either—

(i) the overtime being cancelled on that day; or

(ii) the overtime being necessary to be continuous to such an extent that the employee cannot partake of the meal;

such employee shall be paid an allowance of six dollars and forty cents (\$6.40) in lieu.

(e) An employee shall not be entitled to a meal allowance under the terms of this subclause if such an employee is already in receipt of a meal allowance for the prescribed meal period under Clause 9.—Travelling Allowances, or Clause 10.—Relieving Allowances.

(6) The following formulae shall be used in calculating the hourly rate for overtime—

(a) Time and one half Fortnightly salary	X	3
80		2
(b) Double Time Fortnightly salary	X	2
80		1

(7) In calculating payment for overtime the following arrangements shall apply—

(a) No payment to be made for work performed under fifteen (15) minutes.

(b) Payments for thirty (30) minutes shall be made for authorised overtime of between fifteen (15) and thirty (30) minutes.

(c) The same procedure as contained in paragraph (a) and paragraph (b) of this subclause shall apply for each thirty (30) minutes after the first.

(8) Notwithstanding any other provisions contained in this award, the Commissioner may determine localities or stations where an ongoing regular additional shift of eight (8) hours each fortnight or an additional four (4) hours per week shall be worked on a regular basis in accordance with the following arrangements.

(a) The additional eight (8) hour shifts shall be rostered in advance and clearly shown on the roster.

(b) The allowance to be paid for the additional eight (8) hours actually worked is separate from any other overtime provided in this clause. The allowance shall be paid at the rate of thirteen (13) times the base hourly rate prescribed in paragraph (c) of subclause (2) of Clause 6.—Salaries.

(c) An officer in charge of a station required to occupy departmental quarters attached or adjacent thereto, or an employee relieving in such position, who has no fixed daily hours shall be paid the allowance for working an additional four (4) hours each week.

(d) The allowance shall not apply—

(i) for any period of paid or unpaid leave; or

(ii) for any period when an employee is attending an in-service course; or

(iii) when the additional hours are not actually worked.

(9) The provisions of this clause shall not apply to an employee who returns on a voluntary basis for additional duty at sporting or public events.

16.—SHIFT PENALTIES

(1) Employees other than those working in excess of forty (40) hours in a week on a voluntary basis at sporting and other public events shall be paid an allowance of \$16.25 for each ordinary eight (8) hour shift actually worked, other than day

shifts which commence on or between the hours of 6.00am and 10.00am on Monday to Friday.

(2) Employees other than those working in excess of forty (40) hours in a week on a voluntary basis at sporting or other public events, who work shifts of other than eight (8) hours' duration under the provisions of subclause (9) of Clause 14.—Hours of Duty of this award, shall be paid the shift allowance prescribed in subclause (1) of this clause where appropriate on a pro-rata basis.

(3) A part-time employee actually working ordinary shift hours of other than eight (8); on a Monday to Friday commencing prior to 6.00am or concluding after 6.00pm; or at any time on a Saturday or Sunday, shall be paid a proportion of the appropriate allowance contained in subclause (1) of this clause.

17.—ANNUAL LEAVE

(1) (a) Each employee shall be granted annual leave of 42 days (including 12 rest days) on full pay for each year of service. Provided that such employee stationed in the North West shall be granted an additional 7 days annual leave (including 2 rest days) on full pay for each year of service in the North West.

(b) An employee when stationed in the North West who desires to commence leave in the South shall not commence such leave until after arrival in the metropolitan area.

(c) The following travelling concessions apply to and in relation to an employee stationed in a special area who for the employee's annual leave travels to Perth or other place outside the employee's sub-region which is approved of by the Commissioner—

- (i) where public transport is used—free return passes to Perth or that other place on public transport for the employee and the employee's family.
- (ii) where a private vehicle is used—the distance rate to that place so long as the amount so paid does not exceed the cost of free passes granted under paragraph (i);
- (iii) where both public transport and a private vehicle are used—free return passes to that place in respect of the persons travelling by public transport and the distance rate to that place payable under paragraph (ii) so long as the amount so paid does not exceed the cost of providing the persons travelling by private vehicle with a free return pass granted under paragraph (i).

(d) With mutual consent of the Commissioner and the employee annual leave may be taken in more than one period. Such periods to be not less than 14 days.

(e) The travelling concession payable under this subclause is payable only in respect of an employee—

- (i) who has completed 12 months' service in the special area; or
- (ii) if the employee has not completed 12 months' service in the special area before the employee proceeds on annual leave, the employee does so on their return from annual leave before the employee again takes annual leave;
- (iii) shall be repaid to the Department by the employee if the employee fails to complete 12 months' service in the special area unless the failure is due to causes beyond the employee's control.

(f) An employee when stationed at headquarters situated more than 240kms from Perth City Railway Station and travelling to Perth during annual leave shall be allowed such additional leave as is reasonable and necessary to enable the employee to travel to Perth and return.

(g) To standardise the entitlement the following criteria is to be used—

- (i) 240 kms to 500 kms—half day travelling each way but taken as one additional day;
- (ii) 500 kms to 1000 kms—one day's travelling time each way;
- (iii) In excess of 1000 kms and north of the 26th parallel—two and one half day's each way, and all stations south of the 26th parallel but in excess of 1000 kms

be allowed the equivalent of a counterpart north of the 26th parallel.

(2) (a) Where an employee on annual leave is recalled to attend at court from matters arising during the course of his/her duties or to perform other duties the employee shall be paid or be entitled to for each day or part thereof additional payment at ordinary rates for the period of the recall including travelling time plus one (1) day added to his/her annual leave or at the option of the employee two (2) days added to his/her annual leave.

(b) Where an employee is required to attend court on an additional day granted for previous attendance under paragraph (a) of this subclause, he/she shall be entitled to an additional day for attending that court and two (2) further days, a total entitlement of three (3) days. Such additional days as defined under this subclause shall be taken at a time mutually agreed between the employee and the Commissioner.

(c) Where an employee is ill during his/her period of annual leave and produces at the time or as soon as practicable thereafter medical evidence to the satisfaction of the Commissioner that he/she was as a result of illness confined to his/her place of residence or a hospital for at least seven (7) days may with the approval of the Commissioner be granted at a time convenient to the Commissioner additional leave equivalent to the period during which he/she was so confined.

(d) Where an employee is required to attend for a promotional examination or promotional appeal hearing during the period of his/her annual leave he/she shall be granted a day in lieu. Such day to be added to his/her annual leave.

(3) Where an employee is ill during this period of annual leave, and produces at the time, or as soon as is practicable thereafter, medical evidence to the satisfaction of the Commissioner of Police that he was as a result of illness confined to his place of residence, or a hospital for, at least, seven days, he may, with the approval of the Commissioner, be granted at a time convenient to the Police Department additional leave, equivalent to the period during which he was so confined.

(4) A roster shall be posted for the information of employees showing the commencing and finishing date of annual leave.

(5) Notwithstanding the provisions contained in this clause the salary payable to a part-time employee during the period of leave shall be calculated, based on the fortnightly salary at the time the leave is taken, in accordance with the following formula—

$$\frac{\text{Hours worked per fortnight}}{80} \times \frac{\text{Full-time fortnightly salary}}{1}$$

(6) A loading of 18.75% shall be paid to employees when proceeding on annual leave, calculated on the award rate of pay with respect to a maximum of five (5) weeks annual leave. Provided that in no case shall the loading exceed the amount set out in the Australian Bureau of Census and Statistics publication for "Average Weekly Earnings per Male Employed Unit in WA" for the September quarter immediately preceding the date the leave became due.

(7) Annual leave loading shall not be due in respect of any pro rata leave to which an employee is entitled on resignation.

18.—FARES WHILST TRAVELLING

(1) An employee when travelling on duty or on transfer by coastal boat or train (except when actually escorting prisoners) shall be provided with saloon accommodation on boat and 1st class accommodation on train. Similar accommodation shall be provided for the wife and family of an employee on transfer.

(2) When travelling overnight by train, first-class sleeping accommodation shall be provided by the Department, if available, provided that when a sleeping berth is provided, the bed allowance will not apply.

19.—LONG SERVICE LEAVE

(1) (a) Employees whose continuous service does not exceed ten (10) years as at July 1, 1977 are entitled to thirteen (13) weeks long service leave—

- (i) after a period of ten (10) years continuous service; and

- (ii) after each further period of seven (7) years continuous service.

(b) Employees whose continuous service began before July 1, 1977 and who as at that date have at least ten (10) years continuous service but no more than twenty (20) years continuous service are entitled to long service leave calculated on the following basis—

- (i) for each year of such continuous service after July 1, 1977, an amount of long service leave calculated on the basis of thirteen (13) weeks for ten (10) years continuous service; and
- (ii) for each year of such continuous service after July 1, 1977, an amount of long service leave calculated on the basis of thirteen (13) weeks for seven (7) years continuous service, except that employees are not entitled to long service leave until their complete years of continuous service entitle them to thirteen (13) weeks long service leave.

(c) Employees whose continuous service began before July 1, 1977 and who as at that date have more than twenty (20) years continuous service are entitled to thirteen (13) weeks long service leave—

- (i) after a period of ten (10) years' continuous service; and
- (ii) after a further period of ten (10) years' continuous service; and
- (iii) after each further period of seven (7) years' continuous service.

(2) Notwithstanding the foregoing provisions of this clause each employee shall, in addition to the entitlement thereby conferred, be entitled to one (1) days leave with pay for each year of continuous service completed on or before June 30, 1984.

(3) On and after July 1, 1984 each employee shall qualify for long service leave in the following terms—

- (a) Subject to paragraphs (d) and (e) of this subclause an employee who has completed seven (7) years continuous service with the employer shall be entitled to thirteen (13) weeks long service leave on full pay.
- (b) Subject to paragraph (e) of this subclause for each subsequent period of seven (7) years service an employee shall be entitled to an additional thirteen (13) weeks long service leave on full pay.
- (c) A long service leave entitlement which fell due between July 1, 1984 and March 16, 1988 amounted to three (3) months. A long service leave entitlement which falls due on or after March 16, 1988 shall amount to thirteen (13) weeks.

Subject to the Commissioner's convenience and approval an employee may take the leave in not more than three (3) separate periods subject to the following—

- (i) in the case of long service leave which fell due between July 1, 1984 and March 16, 1988, the portion of long service leave shall be one complete month's entitlement or a multiple thereof;
- (ii) in the case of long service leave which falls due on or after March 16, 1988, the portion of long service leave shall be not less than four (4) weeks entitlement and portions in excess of four (4) weeks shall be in multiples of one (1) week's entitlement and provided also that a minimum balance of long service leave of four (4) weeks is available for utilisation.
- (d) For the purposes of determining an employee's long service leave entitlement under the provisions of paragraphs (a), (b) and (c) of this subclause the expression "continuous service" includes any period during which the employee is absent on full pay or part pay but does not include—
 - (i) any period exceeding two (2) weeks during which an employee is absent on leave without pay or maternity leave, except where leave without pay is approved for the purpose of

fulfilling an obligation by the Government of Western Australia to provide staff for a particular assignment external to the Public Sector of Western Australia;

- (ii) any period during which an employee is taking long service leave entitlement or any portion thereof except in the case of subclause (12) of this clause when the period excised will equate to a full entitlement of thirteen (13) weeks;
 - (iii) any service by an employee who resigns, is dismissed or whose services are otherwise terminated other than service prior to such resignation, dismissal or termination when their prior service had actually entitled the employee to the long service leave provided under this clause;
 - (iv) subject to paragraph (v) of this subclause, any period of service between the sixth anniversary date of the employee having accrued an entitlement to long service leave, or a deferred commencing days approved by the Commissioner pursuant to subclause (4) of this clause and the date on which the employee clears that entitlement;
 - (v) any service by the employee between the date by which long service leave entitlements are required to be cleared pursuant to subclause (5) of this clause, or a deferred commencing date approved by the Commissioner pursuant to subclause (4) of this clause and the date on which the employee clears the entitlement required;
 - (vi) any service by an employee who has been granted a deferment for the taking of long service leave by the Commissioner because of impending retirement pursuant to subclauses (4) or (5) of this clause, between a deferred commencing date approved by the Commissioner and the date the employee retires or, clears a full entitlement to long service leave if the employee does not retire on the date nominated;
 - (vii) any period of service that was taken into account in ascertaining the amount of a lump sum payment in lieu of long service leave;
 - (viii) any service of the employee prior to attaining the age of eighteen (18) years.
 - (e) Payment made for long service leave granted to an employee who has been employed on a part time basis or on both a full time and part time basis during a qualifying period shall be adjusted according to the hours worked by the employee, subject to the following.
 - (i) If an employee consistently worked on a part time basis for a regular number of hours during the whole of the employee's qualifying service, the employee shall continue to be paid the salary determined on that basis during the long service leave.
 - (ii) If an employee has worked a varying number of weekly hours during the period of qualifying service, the payment for long service leave granted in respect of part time service should be calculated on a salary which bears to the full time salary of the position occupied by the employee when taking leave in the same proportion that the hours worked when employed part time bears to the normal weekly hours of a full time employee.
- (4) (a) Long service leave shall be taken at any time within six (6) years of it becoming due, at the convenience of the Commissioner. Provided that the Commissioner may approve the deferment of the taking of long service leave beyond six (6) years in exceptional circumstances. Provided further that such exceptional circumstances shall include retirement within seven (7) years of the date of entitlement.

(b) Approval to defer the taking of long service leave may be withdrawn or varied at any time by the Commissioner giving the employee notice in writing of the withdrawal or variation.

(5) (a) Employees having an entitlement to long service leave at March 1, 1988 are required to clear one full entitlement of long service leave before March 1, 1994.

(b) Employees having more than one (1) entitlement to long service leave at March 1, 1988 shall be required to clear one (1) full entitlement of long service leave by March 1, 1994 and a further full entitlement within each six (6) years thereafter, until the employees entitlement to long service leave has been cleared.

(c) Provided that the Commissioner may approve the deferment of the taking of long service leave beyond March 1, 1994 in exceptional circumstances. Provided further that such exceptional circumstances shall include retirement on or before March 1, 1995.

(6) (a) On the first working day of March in each year the Commissioner shall by notice in writing advise each relevant employee in the Department—

- (i) of the amount of long service leave which the employee is then entitled under the provisions of this clause;
- (ii) of the amount of long service leave to which the employee will become entitled at any time during the next succeeding twelve (12) months; and
- (iii) the date by which the leave is required to be cleared pursuant to subclause (4) and subclause (5) of this clause.

(b) The notice referred to in paragraph (a) of this subclause shall require the employee to furnish to the Commissioner within one (1) month of the receipt of the notice, particulars of the dates between which the employee desires to take the long service or part thereof to which the employee is or will become entitled, and whether, to what extent and for what reasons the employee desires to defer the taking of the leave.

(7) On application to the Commissioner a lump sum payment for the money equivalent of any—

- (a) Long Service Leave entitlement for continuous service as provided in paragraph (a) and paragraph (b) of subclause (3) of this clause shall be made to an employee who resigns, retires, is retired or is dismissed or in respect of an employee who dies;
- (b) Pro-rata long service leave based on continuous service of a lesser period than that provided in paragraph (a) and paragraph (b) of subclause (3) of this clause for a long service leave entitlement shall be made—
 - (i) to an employee who retires at or over the age of 55 years or who is retired on the grounds of ill health if the employee has completed not less than twelve (12) months continuous service before the date of retirement;
 - (ii) to an employee who, not having resigned is retired by the Commissioner for any other cause, if the employee has completed not less than three (3) years continuous service before the date of retirement; or
 - (iii) in respect of an employee who dies, if the employee has completed not less than twelve (12) months continuous service before the date of death.
- (c) In the case of a deceased employee, payment shall be made to the estate of the employee unless the employee is survived by a legal dependant approved by the Commissioner, in which case payment shall be made to the legal dependant.

(8) The calculation of the amount due for long service leave accrued and for pro rata long service leave shall be made at the rate of salary of an employee at the date of retirement or resignation or death, whichever applies.

(9) (a) An employee who desires to be granted a period of long service leave shall give at least two (2) months notice in writing of the fact and shall make application to the Commissioner. The application shall state the amount of leave required

and the date from which the leave is to commence. In case of emergency and for reasons to be stated in writing, an employee may at any time apply to the Commissioner for any long service leave due.

(b) An employee may prior to commencing long service leave request approval for the substitution of another date for commencement of long service leave and the Commissioner may approve such substitution.

(10) Interstate—

(a) Where an employee was, immediately prior to being employed under the provisions of the Police Act, employed in the Service of the Commonwealth or of any other State of Australia and the period between the date when the employee ceased previous employment and the date of commencing employment does not exceed one (1) week, that employee shall be entitled to long service leave determined in the following manner.

- (i) The pro-rata portion of long service leave to which the employee who have been entitled up to the date of appointment under the provisions of the Police Act shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro-rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this Clause; and
- (ii) The balance of the long service leave entitlement of the employee shall be calculated upon appointment under the provisions of the Police Act in accordance with the provisions of this clause.

(b) The maximum break in employment permitted by paragraph (a) of this subclause may be varied by the approval of the Commissioner provided that where employment under the provision of the Police Act commenced more than one (1) week after ceasing the previous employment, the period in excess of one (1) week does not exceed the amount of accrued and pro-rata annual leave paid out at the date the employee ceased with the previous employer or in the case of defence forces the employee applied to join the police force before ceasing the previous employment and was inducted into police training in the first available police academy school. This matter must be negotiated and documented as part of the recruitment process.

(c) An employee previously employed by the Commonwealth or by any other State of Australia shall not proceed on any period of long service leave until the employee—

- (i) has served a period of not less than three (3) years continuous service under this award; and
- (ii) is entitled to thirteen (13) weeks long service leave on full pay.

The Commissioner may approve of an employee proceeding on long service leave prior to the employee completing three (3) years continuous service.

(d) Nothing in this clause confers or shall be deemed to confer on any employee previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of long service leave that accrued in the employees favour prior to the date on which the employee commenced employment under the provisions of the Police Act.

(e) Intrastate—

Where an employee was immediately prior to being employed under the provisions of the Police Act, an employee in—

- (i) a department or sub-department of the Public Service established pursuant to the Public Service Act 1978;

- (ii) a statutory authority listed in Schedule 1 of the Financial Administration and Audit Act 1985;
- (iii) either of the Houses of the Parliament of the State under the separate control of the President or Speaker or under their joint control;
- (iv) the Health Education Council; or
- (v) the Nurses Board of W.A.,

and the period between the date when the employee ceased previous employment and the date of commencing employment under the provisions of the Police Act does not exceed one (1) week, that employees shall be entitled to thirteen (13) weeks of long service leave on full pay on whichever is the earliest date of—

- (I) the date on which the employee would have become entitled to long service leave had the employee remained in the former employment; or
- (II) the date determine by—
 - (aa) calculating the pro rata portion of long service leave to which the employee would have been entitled up to date of appointment under the Police Act, in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this clause; and
 - (bb) by calculating the balance of the long service leave entitlement of the employee upon appointment under the provisions of the Police Act in accordance with the provisions of this clause.
- (f) The maximum break in employment permitted by paragraph (e) of this subclause may be varied by the approval of the Commissioner provided that where employment under the provisions of the Police Act commenced more than one (1) week after ceasing the previous employment, the period in excess of one (1) week does not exceed the amount of accrued and pro rata annual leave paid out at the date the employee ceased with the previous employer. This matter must be negotiated and documented as part of the recruitment process.
- (g) An employee who was not paid out for accrued and pro rata annual leave held at the date of ceasing previous employment shall comply with the provisions of paragraph (e) of this subclause.
- (h) In addition to any entitlement arising from the application of paragraph (e) of this subclause, an employee previously employed by a prescribed State body or statutory authority may, on approval of the Commissioner, be credited with any period of long service leave to which he/she became entitled during the former employment but had not taken at the date of appointment under the provisions of the Police Act provided the employees' former employer had given approval for the employee to accumulate the entitlement.

(11) An employee who has elected to retire at or over the age of fifty five (55) years and who will complete not less than twelve (12) months continuous service before the date of retirement may make application to take pro rata long service leave before the date of retirement.

(12) (a) A full-time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full and part time basis may elect to take a lesser period of long service leave calculated by converting the part-time service to equivalent full-time service.

(b) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on a part time basis may elect to take a lesser period of long service leave calculated by converting the part-time service to equivalent full-time service.

(13) Notwithstanding the foregoing, provisions in this clause, the Commissioner may direct an employee to take accrued long service leave and may determine the date of which such leave shall commence.

(14) Where an employee is ill during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Commissioner that as a result of the illness the employee was confined to his/her place or residence or a hospital for a period of at least fourteen (14) consecutive calendar days, the Commissioner may grant sick leave for the period during which the employee was so confined and reinstate long service leave equivalent to the period of confinement.

(15) (a) An employee shall, when recalled from long service leave to attend at Court from matters arising during the course of their duties or to perform other duties, be paid or be entitled to for each day or part thereof additional payments at ordinary hours rates for the period of the recall including travelling time plus one (1) day added to his/her long service leave or at the option of the employee, two (2) days added to his/her long service leave.

(b) Where an employee is required to attend court on an additional day granted for previous attendance under paragraph (a) of this subclause he/she shall be entitled to an additional day for attending that court and two (2) further days, a total entitlement of three (3) days. Such additional days as defined under this paragraph shall be taken at a time mutually agreed between the employee and the Commissioner.

20.—CAMPING ALLOWANCE

(1) An employee who is stationed in a "camp of a permanent nature" shall be paid the appropriate allowance prescribed by Item 1 or Item 2 of the Schedule attached hereto for each day spent camping.

(2) An employee who is stationed in a "camp other than a permanent camp" or is required to camp out shall be paid the appropriate allowance prescribed by Item 3 or Item 4 of the Schedule attached hereto for each day spent camping.

(3) (a) Where to contain the additional travelling costs and/or to avoid lost working time associated with returning to a location where accommodation is available or to ensure the security and safety of a vehicle/firearms/radio/other equipment an employee camps beside or sleeps inside the vehicle;

- (i) on an isolated outback patrol; or
- (ii) on heavy haulage patrolling duty from South Hedland to Carnarvon, Perth to Carnarvon and north to the Northern Territory border; or
- (iii) when escorting trucks conveying heavy machinery or equipment; or
- (iv) on Electronics Branch country patrols in a mobile workshop; or
- (v) on country patrols in a road safety van;

such employee shall be paid the appropriate allowance prescribed by Item 5 of the schedule attached hereto for each day spent camping.

(b) Where an allowance is provided under this subclause the provisions of Clause 15.—Overtime of this award shall not apply to an employee travelling.

(4) An employee who occupies a "house" shall not be entitled to allowances prescribed by this clause.

(5) An employee accommodated at a Government institution, hostel or similar establishment shall not be entitled to allowances prescribed by this clause.

(6) Where an employee is provided with food and/or meals by the Department free of charge, then the employee shall only be entitled to receive one half (1/2) of the appropriate allowance to which he/she would otherwise be entitled for each day spent camping.

(7) (a) An employee shall not be entitled to an allowance under this clause for periods in excess of ninety one (91) consecutive days unless the Commissioner otherwise determines.

Provided that where the provisions of Clause 9.—Travelling Allowances of this award are availed of then such periods shall be included for the purposes of determining the ninety one (91) consecutive days.

(b) The Commissioner in reviewing any claim under this subclause may determine an allowance other than is contained in this clause.

(8) When camping, an employee shall be paid the allowance on weekly leave days if available for work immediately preceding and succeeding such days and no deduction shall be made under these circumstances when an employee does not spend the whole or part of those days in camp unless he/she is reimbursed under the provisions of Clause 9.—Travelling Allowances of this award.

(9) (a) This clause shall be read in conjunction with Clauses 9.—Travelling Allowances, Clause 10.—Relieving Allowances, and Clause 11.—Transfer Allowance of this award for the purpose of paying allowances and camping allowance shall not be paid for any period in respect of which travelling, transfer or relieving allowances are paid. Where portions of a day are spent camping the formula contained in subclause (4) of Clause 9.—Travelling Allowances of this award shall be used for calculating the portion of the allowance to be paid for that day.

(b) For the purposes of this subclause arrival at headquarters shall mean the time of actual arrival at camp. Departure from headquarters shall mean the time of actual departure from camp or the time of ceasing duty in the field subsequent to breaking camp, whichever is the latter.

(10) An Employee in receipt of an allowance under this clause shall not be entitled to receive the incidental allowance prescribed by Clause 9.—Travelling Allowances of this award.

(11) Whenever an employee provided with a caravan is obliged to park the caravan in a caravan park such employee shall be reimbursed the rental charges paid to the authority controlling the caravan park, in addition to the payment of camping allowance.

(12) There is no requirement on the Commissioner to provide food, camping equipment or cooking utensils. Each of the allowances prescribed in the Schedule attached hereto includes a component for the employee providing his/her own food, camping equipment and cooking utensils and as compensation for the degree of disability the employee is subject to associated with the nature of work and the accommodation utilised.

SCHEDULE OF CAMPING ALLOWANCES

	RATE PER DAY \$	ITEM
South of 26 degrees South Latitude:		
Permanent Camp—Cook provided by the Department	34.05	1
Permanent Camp—No Cook provided by the Department	41.75	2
Other Camping—Cook provided by the Department	49.45	3
Other Camping—No Cook provided by the Department	57.15	4
Camping beside or inside vehicle	75.20	5
North of 26 degrees South Latitude:		
Permanent Camp—Cook provided by the Department	37.70	1
Permanent Camp—No Cook provided by the Department	45.35	2
Other Camping—Cook provided by the Department	53.05	3
Other Camping—No Cook provided by the Department	60.75	4
Camping beside or inside vehicle	104.85	5

21.—CONSULTATIVE AGREEMENT

(1) The parties to this award are committed to award modernisation and to improve the efficiency of the Police Force throughout Western Australia.

(2) To facilitate the outcomes as determined in subclause (1) of this clause, there shall be established a Consultative Committee with equitable representation of the Police Department and Union which will provide;

- for the continuation of the award restructuring process as determined, from time to time, by the Western Australian Industrial Relations Commission;
- a forum which will deal with ongoing claims for salary and conditions;
- the means which positive assistance can be given to enhancing the career opportunities and professional development of Police Officers within the Force throughout Western Australia.

(3) Liberty to apply is reserved in respect to any amendments, deletions or additions pertaining to the provisions of this clause.

22.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of the Award so that it provides for more flexible and efficient working arrangements, enhances productivity, improves the quality of working life, skills and job satisfaction and assists positively in the restructuring process.

(2) In conjunction with testing the current Award structure the Union is prepared to discuss all matters raised by the employer for increased flexibility and efficiency. As such, any discussions with the employer must be premised on the understanding that—

- the majority of employees stationed in the section, station or branch must genuinely agree;
- no employee will lose income as a result of the change;
- the Union must be party to the agreement, in particular, where the employees at any section, station or branch are holding discussions which would require any award variation. The Union shall be invited to participate;
- the Union shall not unreasonably oppose any agreement;
- subject to the provision of this award, any agreement reached may require ratification by the Commission.

(3) Should an agreement be reached pursuant to subclause (2) hereof and that agreement requires an award variation, no party will oppose the award variation.

(4) There shall be no limitation on any award matter being raised for discussion.

23.—ADJUSTMENT OF REIMBURSEMENT ALLOWANCES

The rates of all allowances which are for reimbursement provided in the award shall be reviewed each year with any variations to have effect on and from July 1 each year.

24.—DISTURBANCE ALLOWANCE

(1) An employee who is transferred in accordance with subclause (1) of Clause 11.—Transfer Allowances and incurs expenses in the areas referred to in subclause (2) of this clause as a result of that transfer shall be reimbursed the actual expenditure incurred upon production of receipts or such other evidence as may be required.

(2) (a) Costs incurred for the installation/connection/re-connection of a telephone at the employee's new residence provided a telephone at the employee's new residence provided a telephone had been installed at the employee's former residence. Save that reimbursement shall also be made where an employee is transferred and leaves the residence in which he/she has installed a telephone and returns to the former locality on subsequent transfer.

(b) Costs incurred with the connection or re-connection of water, gas and/or electricity services to the employee's household.

(c) Costs incurred with the re-direction of mail for a period of three (3) months.

25.—ENTITLEMENT TO LEAVE AND ALLOWANCES THROUGH ILLNESS OR INJURY

(1) An employee who becomes incapacitated shall as soon as possible—

- (a) notify the employee's officer in charge of that fact and of the employee's whereabouts; and
- (b) notify the Manager of the nature of the illness or the nature and cause of the injury, as the case may be.

(2) Except in respect of a day on which an employee becomes incapacitated while on duty, an application for leave by an employee on account of incapacity shall be supported by a certificate of a medical practitioner or, where the incapacity involves a dental condition, by a certificate of a dentist.

(3) The application shall be—

- (a) in a form approved by the Commissioner; and
- (b) submitted to the Manager, and the certificate in its support shall be—
- (c) submitted to the Manager.

(4) Subject to subclause (2) and to the compliance by the employee of subparagraphs (a), (b) and (c) of subclause (3), the Commissioner may grant to an employee in respect of the employee's incapacity leave of absence with pay—

- (a) for up to 168 days in a calendar year; and
- (b) if so recommended by the Manager and subject to any terms or conditions recommended by the Manager, for a further period.

(5) Except where an employee is incapacitated through the employee's fault or misconduct, an employee is entitled to receive in respect of a period of leave of absence approved under subclause (4) and subject to any terms and conditions imposed under subparagraph (4) (b), any special allowances which the employee would have received under the Award if the employee had not been incapacitated.

(6) The district allowance prescribed by the Award ceases to be payable—

- (a) after an incapacitated employee and the family of that employee have been absent from the employee's region for a continuous period exceeding 6 weeks; and
- (b) for so long thereafter as that absence continues.

(7) In subclause (6) "family" means the spouse and any children of the employee residing with the employee.

(8) (a) An employee who suffers illness or injury through the employee's fault or misconduct is not entitled to paid leave contained within the provisions of subclause (4) under subparagraphs (a) and (b) in respect of absence from duty resulting from that illness or injury.

(b) An employee who suffers illness or injury through the employee's fault or misconduct is not entitled in respect of that illness or injury to receive the benefits contained under Clause 27.—Medical and Pharmaceutical Expenses of the Award.

(c) Where the incapacity of an employee results from the carrying on by the employee of an occupation for which the employee received or expected to receive remuneration, outside of the employee's duties as an employee the Commissioner may grant or refuse to grant paid leave to the employee in respect of the incapacity or may grant the employee leave at a reduced rate of pay.

(9) An incapacitated employee shall not during the employee's absence from duty engage for reward in any other occupation or activity.

(10) An employee who has been absent from duty because of incapacity for longer than 4 weeks shall, before returning to duty, submit to the Manager evidence of the employee's medical fitness to return to duty.

(11) (a) The Commissioner may direct an employee to submit to examination, at the expense of the Commissioner, by one or more medical practitioners nominated in each instance by the Commissioner and the employee shall obey such a direction.

(b) Where an employee has been examined under subclause (11)(a) and the examining medical practitioner expresses the opinion in writing to the Commissioner that the employee is

unfit for duty because of illness or injury, the Commissioner may direct the employee, to apply for leave on that ground and the employee shall obey such a direction.

26.—MEDICAL AND HOSPITAL EXPENSES THROUGH ILLNESS OR INJURY RESULTING FROM DUTIES.

(1) Subject to the provisions contained within Clause 25.—Entitlement to Leave and Allowances Through Illness or Injury of this Award under subclause (8) (b), the Commissioner shall pay the reasonable medical and hospital expenses incurred by an employee as a result of illness or injury arising out of or in the course of the employee's duties suffered by the employee in the course of travel to or from a place of duty.

27.—MEDICAL AND PHARMACEUTICAL EXPENSES.

(1) Subject to the provisions contained within Clause 25.—Entitlement To Leave And Allowances Through Illness or Injury of this Award, under subparagraphs (a) and (b) of subclause (8), an employee who receives—

- (a) any consultation, treatment or other service by a medical practitioner; or
- (b) any X-ray or other service not provided by a medical practitioner but provided under a referral given by a medical practitioner, may claim from the Commissioner reimbursement of the amount paid for that service, less the amount of any Medicare benefits paid or payable, and the Commissioner may pay the claim.

(2) An employee is entitled to reimbursement by the Commissioner of the cost of a medicine supplied by a pharmaceutical chemist on the prescription of a medical practitioner if the medicine was at the time of issue of the prescription specified in the Commonwealth Schedule of Pharmaceutical Benefits for Medical Practitioners.

(3) An employee claiming reimbursement of expenditure shall submit with the employee's claim—

- (a) in the case of expenditure of a kind referred to in subclause (1)—
 - (i) a receipt for the amount paid;
 - (ii) a statement of the amount received or receivable as Medicare benefits; and
 - (iii) where applicable, documentary evidence that the health service not provided by a medical practitioner was provided under a referral given by a medical practitioner;

and

- (b) in the case of expenditure of a kind referred to in subclause (2), a receipt for the amount paid, and the Commissioner, before approving payment, may require the employee to supply additional information as to the identity of the person treated, the amount paid or, where applicable, the prescription.

28.—RETIREMENT, REMOVAL OR DEATH OF AN EMPLOYEE

(1) Retirement.

- (a) An employee may retire on attaining the age of 55 years.
- (b) Employee's of the Force other than the Commissioner, Deputy Commissioner and Assistant Commissioner shall retire on attaining the age of 60 years.
- (c) The Deputy Commissioner and Assistant Commissioner shall retire on attaining the age of 62 years.

(2) Examination by Medical Board.

- (a) Where the Commissioner is of the opinion that an employee is not fit for further service, he may direct the employee to be examined by a medical board.
- (b) The medical board referred to in subparagraph (a) shall consist of 3 legally qualified medical practitioners nominated by the person who holds or acts in the office of Commissioner of Health under the Health Act 1911.
- (c) An employee shall not fail to carry out a direction given pursuant to subparagraph (a).

- (d) Subject to the Act, where the medical board referred to in subparagraph (b) reports to the Commissioner that the employee in question is unfit for further active service the Commissioner shall advise the employee of the date the employee will cease duty.

(3) Allowances Paid on Death of an Employee.

Where an employee dies the spouse of the employee and such of the children of the employee as are under the age of 18 years are entitled to the allowances prescribed by Clause 9.—Travelling Allowances and Clause 11.—Transfer Allowance of the Award for the conveyance of themselves and their furniture and effects to the Metropolitan area or to any part of the State approved of by the Commissioner.

(4) Leave Entitlement to be Paid Out.

On the death of an employee the Minister may on the recommendation of the Commissioner grant to the relatives of the employee who were dependent on the employee at the date of the employee's death the monetary equivalent, computed to the date of death, of—

- (a) annual leave accrued and owing to the employee;
- (b) long service leave accrued and owing to the employee;
- (c) pro rata leave for each completed month of service of the employee in the current year.

29.—NAMED PARTIES

The named parties to this award are The Western Australian Police Union of Workers, 73 Burswood Road, Victoria Park, 6100 and The Minister for Police, 13th Floor, Dumas House, 2 Havelock Street, West Perth, 6005.

DATED at Perth this 24th day of April, 1980.

**ENROLLED NURSES AND NURSING ASSISTANTS
(PRIVATE) AWARD.
No. 8 of 1978.**

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 2nd day of September, 1997

J. SPURLING,
Registrar.

“Enrolled Nurses and Nursing Assistants (Private) Award”

1.—TITLE

This Award shall be known as the “Enrolled Nurses and Nursing Assistants (Private) Award” No 8 of 1978 and replaces the “Nursing Aides and Nursing Assistants (Private) Award”, the “Nursing Aides and Nursing Assistants (Private) Interim Award” No 8 of 1978 and the Nursing Assistants (Homes of Peace) Award No 27 of 1960.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

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1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
3. Scope
4. Term
5. Area
6. Definitions

7. Hours
8. Overtime
9. Standby
10. Annual Leave
11. Public Holidays
12. Long Service Leave
13. Sick Leave
14. Maternity Leave
15. Compassionate Leave
16. Contract of Service
17. Laundry and Uniforms
18. Rosters
19. Time and Wages Record
20. Interviews
21. Notices
22. Deductions for Lodging
23. Location Allowances
24. Casual Employees
25. Shift Work and Weekend Work
26. Payment of Wages
27. Calculation of Penalties
28. Part Time Employees
29. Temporary Employees
30. Wages
31. Liberty to Apply
32. Fares and Motor Vehicle Allowances
33. Effect of 38 Hour Week
34. Payroll Deduction of Union Dues
35. Dispute Settlement Procedure
36. Introduction to Change
37. Structural Efficiency Implementation Tasks
38. Enterprise Flexibility Provisions

PART II

1. Long Service Leave
2. Sick Leave
 - Appendix—Resolution of Disputes Requirements
 - Schedule A—Parties to the Award
 - Schedule B—Respondents
 - Schedule C—Ramsay Health Care Pty Ltd Hollywood Private Hospital Provisions
 - Appendix—S.49B—Inspection Of Records Requirements

3.—SCOPE

Part 1 of this award shall apply to the workers described in Clause 28.—Wages of this award employed in the hospital industry as carried out by the employers named as respondents to this award provided that the provisions contained in Part II of this award shall be applied in substitution for the provisions contained in the clauses of the same title in Part I of the award only by the Homes of Peace (Inc) and the Association of the Blind of W.A. (Inc) and the Spastic Welfare Association of W.A. (Inc) and Nulsen Haven Association (Inc.).

4.—TERM

This award shall operate for a period of two years as from the date of this Order.

5.—AREA

This award shall have effect throughout the state of Western Australia.

6.—DEFINITIONS

(1) “Nursing Assistant” means an employee, other than one registered pursuant to the provisions of the Nurses Act, 1968 or one who is in training for the purpose of such registration, whose substantial employment in terms of the purpose to be achieved by it is the provision of nursing care to persons.

(2) “Nursing care” means—

- (a) giving assistance to a person who, because of disability, is unable to maintain his/her bodily needs without frequent assistance, or
- (b) carrying out tasks which are directly related to the maintenance of a person's bodily needs where that person because of disability is unable to carry out those tasks for her/himself, or
- (c) assisting a person registered pursuant to the provisions of the Nurses Act 1968 to carry out the work

described in paragraphs (a) or (b) hereof or any other work directly related to a person's care.

The term does not include work related to a person's care where that work does not involve personal contact with that person.

(3) "Enrolled Nurse Level One" means a Registered Enrolled Nurse registered as such pursuant to the Nurses Act, 1968 as amended.

(4) "Enrolled Nurse Level Two" means a Registered Enrolled Nurse who—

- (a) has become proficient to do work deemed extraordinary by the employer or the Western Australian Industrial Relations Commission; or
- (b) has obtained a post basic certificate approved by the Nurses' Board of W.A. and he/she is required to use the knowledge gained in that certificate as part of his/her employment.
- (c) Provided that an Enrolled Nurse Level One who is considered proficient to operate a renal dialysis machine shall be deemed to be included in this classification while operating this machine.

(5) "Enrolled Nurse Level Three" means a Registered Enrolled Nurse who has been classified Special Class by the employer or by the Western Australian Industrial Relations Commission.

(6) "Union" means the Federated Miscellaneous Workers' Union of Australia, Hospital, Service and Miscellaneous, W.A. Branch.

(7) "Part-time Employee" means an employee who regularly works less than forty hours per week.

(8) "Casual Employee" means an employee engaged for a period of less than one month. Where the employment continues beyond one month, he/she shall be deemed to be a temporary employee from the end of that month.

(9) "Temporary Employee" means an employee engaged for a specific period or periods longer than one month but less than 12 months.

(10) "Accrued Day(s) Off" means the paid day(s) off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed in Clause 7.—Hours of this Award.

7.—HOURS

(1) The ordinary working hours shall be an average of 38 hours per week over any five days of the week, with no more than 10 hours per shift, worked over any one of the following cycles.

- (a) A four week cycle of nineteen days of eight hours each with 0.4 of one hour each day worked accruing as an entitlement to take the twentieth day in each cycle as a day off and paid for as though worked.

Provided that an employee who, at the completion of a 20 day work cycle, has not accrued sufficient hours to enable him/her to take a full paid shift off duty, shall continue past the 20 day work cycle until sufficient hours have accrued to enable him/her to take a full paid shift off duty.

- (b) Actual hours of 76 hours over nine days per fortnight with the tenth day to be taken as an unpaid rostered day off.
- (c) Actual hours of 40 per week or 80 per fortnight with two hours of each week's work accruing as an entitlement to a maximum of twelve days off in each twelve month period.

For the purposes of paragraph (c) the Accrued Days Off shall be taken in a minimum period of one week made up of five consecutive Accrued Days Off in conjunction with a period of annual leave or at a time mutually acceptable to the employer and the employee; or

As single day absences at a time suitable to the employer and subject to 48 hours' clear notice given to the employee in accordance with Clause 18.—Rosters of this award.

Notwithstanding the provisions of paragraph (c)—

- where an employer and employee mutually agree Accrued Days Off may be taken in single day absences;
- at the request of an employee an employer may agree to an Accrued Day Off being taken in a period of less than one day provided that the period of time off work is taken from the commencement of the employee's normal rostered shift or up to the conclusion of the employee's normal rostered shift.

(2) In addition to subclause (1) of this clause, by agreement between the employer and the Union a work cycle of 38 hours per week or 76 hours per fortnight or any other method agreed may be worked.

(3) Any change in rostering arrangements will be designed to improve productivity, efficiency and cost effectiveness in the workplace.

- (a) Any proposed roster variations for each site or subsite shall be explained to the employees concerned and to the Union who will consider them.
- (b) The affected parties (i.e. site management and employees) will then consult with each other with a view to agreeing to the proposed roster.
Provided that where the majority of employees affected by the proposed change agree the Union will not unreasonably withhold its agreement.

- (c) Where agreement cannot be reached, the issues will be referred to the Western Australian Industrial Relations Commission for conciliation and, if necessary, arbitration.

(4) The provisions of this clause shall apply to a part-time employee in the same proportion as the hours normally worked bear to a full-time employee.

(5) At the discretion of the employer employees may be paid a rate of pay using a divisor of 38 hours per week in lieu of Accrued Days Off under the following conditions.

- (a) Where the employee works no more than 16 hours per week or two shifts per week; or
- (b) At the request of the employee. The employee may withdraw the request within 14 days of submitting it to the employer after which time it shall be binding on the employee. Such agreement shall remain in force for the period of employment, provided that it can be revoked by agreement between the employer and employee.

(6) An employer and employee may, by agreement, substitute the Accrued Day Off the employee is to take off for another day, in which case the Accrued Day Off shall become an ordinary working day.

(7) No employee shall be required to work in excess of five shifts per week or 10 shifts per fortnight.

(8) An employee on day shift shall, where practicable, be allowed two days' continuous time off duty per week and on night shift shall, where practicable, be allowed two days' continuous time off duty per week or four days' continuous time off duty per fortnight. Provided that where the days off duty as specified are missed and not taken within four weeks, equivalent time shall be added to the annual leave of the employee.

(9) (a) An employee changing from night shift to day shift, or from day shift to night shift, shall be free from duty during the 20 hours immediately preceding the commencement of the changed shift.

(b) An employee changing from evening shift to day shift shall not be required to commence such duty until a period of 10 hours has elapsed since ceasing evening shift.

(c) An employee shall not be rostered for duty until at least 10 hours have elapsed from when the previous rostered shift ended.

(d) The provisions of this subclause shall not apply if the employee is required to perform duty to enable the nursing services of the hospital to be carried on when an employee is absent from duty or in an emergency or where the employer and the Union mutually agree to vary the provisions of this subclause.

(10) (a) Meal breaks shall not be less than 30 minutes and shall not be counted as time worked. Provided that where an employee is called on duty during a meal time the period worked shall be counted in the ordinary working hours of the shift. Provided further, that where the employee is required to be on call for the whole of the shift a meal break shall be taken in the employer's time.

(b) No more than three breaks shall be allowed in any one shift, including meal breaks. Unless the employer and employee mutually agree to work up to six hours without a meal break, the employee shall not work for more than five hours without a meal break.

(11) Morning and afternoon tea breaks of not more than seven minutes shall be allowed without deduction of pay at a time convenient to the employer.

(12) Where an employee is required to travel as part of his/her duty such travelling time shall be considered as part of his/her working time and there shall be no reduction in respect thereof.

(13) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave Provisions published in Volume 66 of the Western Australian Industrial Gazette at pages 1 to 4, the accrued days off standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transferee and may be claimed in accordance with the provisions of this clause.

(14) Notwithstanding anything to the contrary in this award, and at the option of the employer, employees employed in clinics or departments which function during the normal clerical hours of duty may be granted hours of duty together with public holidays, annual leave and overtime, as are generally applicable to the clerical staff employed in the said clinics or departments. The daily hours of duty shall include a break of not more than one hour for lunch and such time shall not be included as part of the normal working week of 40 hours.

(15) Any dispute between an employer and the Union concerning the operation of this clause shall be referred to the Western Australian Industrial Relations Commission.

8.—OVERTIME

(1) Except as hereinafter provided, all time worked in excess of the ordinary working hours prescribed in clause 7.—Hours of this award shall be overtime and be paid for at the rate of time and a half for the first two hours and double time thereafter.

(2) All work performed by workers on any day on which they are rostered off duty or days worked in excess of those provided for in Clause 7.—Hours shall be paid for at the rate of double time.

(3) A worker recalled to work, shall be paid a minimum of three hours at overtime rates, and for all reasonable expenses incurred in returning to work.

(4) Where the worker and the employer so agree, time off in lieu of payment for overtime may be allowed proportionate to the payment to which she is entitled. Such time off to be taken at the convenience of the hospital provided that—

- (a) such time off is in unbroken periods according to each period of overtime worked; and
- (b) the overtime is made up within twenty eight days from the time when it became due, except where it arises from the changeover from night duty to day duty, or day duty to night duty.

(5) Where an employee is required to work overtime and such overtime is worked for a period of at least two hours in excess of the required daily hours of work the employee shall be provided with a meal free of cost or shall be paid the sum of paid \$5.80 as meal money.

This subclause shall not apply where the employee has been advised of the necessity to work overtime on the previous day or earlier.

(6) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that the employee shall have at least 10 consecutive hours off duty between the work of successive days.

9.—STANDBY

(1) For the purposes of this award an employee is on call when she is directed by the employer to remain at such a place as will enable the employer to readily contact her during the hours when she is not otherwise on duty. In so determining the place at which the employee shall remain, the employer may require that place to be within a specified radius from the hospital.

(2) (a) Subject to paragraph (b) of this subclause, an employee shall be paid 18.75% of 1/40th of the rate prescribed in the Nurses (Private Hospitals) Award No. 1 of 1966 for a registered general nurse in her third year for each hour or part thereof she is on call. Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is otherwise made in accordance with the provisions of Clause 8.—Overtime when the employee is recalled to work.

(b) Where the employer supplies the employee with a long-range beeper the employee shall be paid 75% of the rate prescribed by paragraph (a) of this subclause.

(3) If the usual means of contact between the employer and the employee on call is a telephone and if the employee pays or contributes towards the payment of the rental of such telephone the employer shall pay the employee an amount being a proportion of the telephone rental calculated on the basis that for each seven days on which an employee is required to be on call the employer shall pay the employee 1/52nd of the annual rental paid by the employee.

10.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided, a period of seven consecutive weeks' leave shall be allowed to an employee by the employer after each period of twelve months' continuous employment with such employer.

This subclause shall apply to current employees engaged before 12 April 1990 who were in receipt of additional annual leave days as prescribed by this subclause on a no reduction basis, and shall remain in force until 12 April 1997.

(b) (i) Except as hereinafter provided, a period of six consecutive weeks' leave shall be allowed to an employee by the employer after each period of twelve months' continuous employment with such employer.

(ii) Shift employees who in each roster rotate afternoon and/or night shift with day shift shall be granted an additional week's leave. Provided that for employees whose shifts are not subject to regular rotation one day's additional annual leave shall be accrued for each 30 afternoon or night shifts worked to a maximum of 5 annual leave days each month.

Subclause (b) shall apply to employees engaged on or after 12 April 1990.

(c) Where, pursuant to paragraph (3) of subclause 2.—Long Service, of the Long Service Leave provisions published in Volume 65 of the Western Australian Industrial Gazette at pages 1 to 4, the period of continuous service which an employee has had with the transmitter (including any such service with any prior transmitter) is deemed to be service of the employee with the transferee then that period of continuous service shall be deemed to be service with the transferee for the purposes of this subclause.

(2) Prior to commencing leave each employee shall be paid for that period of leave as follows—

- (a) Where an employee has worked less than the fulltime hours per week specified in Clause 7.—Hours of this award over the accrual period for which annual leave is being taken the hours for which payment is made shall be calculated on an average of the number of hours worked per week during the accrual period;
- (b) The rate of wage the employee would have received had she/he not proceeded on leave. In the case of rostered employees that wage shall include the shift work and weekend penalties that employee would have received had he/she not proceeded on leave.

Where it is not possible to calculate the shift and weekend penalties the employee would have received the employee shall be paid the average of such payments made each week over the four weeks prior to taking the leave; or

- (c) For 5/7ths of that leave the rate of wage shown in Clause 30.—Wages of this award for her class of work and in addition be paid a loading of 17.5% of that wage and for the remaining 2/7ths of the leave due in each year be paid according to paragraph (b) of this subclause whichever is the greater benefit.

- (d) Provided that the 17.5% loading prescribed by this subclause shall not be paid on proportionate annual leave on termination.

(3) (a) Except as provided in part (b) of this subclause if after one month's continuous employment an employee lawfully terminates her employment or her employment is terminated by the employer through no fault of the employee, the employee shall be paid 5.38 hours pay (at the rate prescribed by subclause (2) of this clause) in respect of each completed week of continuous service for which annual leave has not already been taken.

(b) An employee who is dismissed for a misconduct which occurred after the completion of a twelve month qualifying period, but before she has taken annual leave in respect of that qualifying period, shall subject to Clause 16.—Contract of Service, be given payment for the leave accrued but not taken.

(4) (a) The annual leave prescribed in subclause (1) of this clause may be split into more than one portion—

- (i) Where the 12 accrued days off are taken in conjunction with annual leave, by the employer once per annum provided that no portion is less than two weeks.
- (ii) By agreement between the employer and the employee.

(b) Any dispute arising out of this clause in relation to splitting or not splitting an employee's annual leave entitlement, if not resolved by agreement between the employer, the employee and the Union, shall be referred to the W.A. Industrial Relations Commission for determination.

(5) Any time in respect of which an employee is absent from work except time for which that employee is entitled to claim paid sick leave or unpaid sick leave up to three months, or the first calendar month of any absence on workers' compensation, or any absence on annual leave, long service leave and compassionate leave shall not count for the purpose of determining annual leave entitlements.

(6) Leave shall be given as soon as practicable after falling due and shall not accumulate except with the consent of the employee, but in no case shall it accumulate for more than two years.

(7) Before going on annual leave each employee shall be given at least two week's notice of the date leave is to be taken, unless the employee and the employer agree to a lesser period.

(8) (a) The annual leave prescribed by this clause may be given and taken before the completion of 12 months continuous service as prescribed by subclause (1) of this clause.

(b) If the services of an employee terminate and the employee has taken a period of leave in accordance with this subclause and if the period of leave so taken exceeds that which would become due pursuant to subclause (3) of this clause the employee shall be liable to pay the amount representing the difference between the amount received by him for the period of leave taken in accordance with this subclause and the amount which would have accrued in accordance with subclause (3) of this clause. The employer may deduct this amount from moneys due to the employee by reason of the other provisions of this award at the time of termination.

(9) The provisions of this clause shall not apply to casual employees.

(10) When an employee proceeds on the first four weeks' of the annual leave prescribed by subclause (1) of this clause there will be no accrual towards an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award. Accrual towards an Accrued Day(s) Off shall continue during any other period of annual leave prescribed by this clause.

11.—PUBLIC HOLIDAYS

(1) An employee who works on any public holiday herein or day observed in lieu thereof, shall be paid a loading of 50% of

the ordinary wage for the time worked in ordinary hours on that day.

(2) For the purposes of this clause the following days shall be public holidays: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

12.—LONG SERVICE LEAVE

(1) The Long Service Leave provisions published in Volume 65 of the Western Australian Industrial Gazette at pages 1 to 4 both inclusive, are hereby incorporated and shall be deemed part of this Award.

(2) When an employee proceeds on long service leave there will be no accrual towards an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.

(3) Any long service leave accumulated as at 1 July, 1985 shall be adjusted in hours in the ratio of 38 to 40. Except that in the case of employees at the Homes of Peace Inc. and Silver Chain Nursing Association Inc. any long service leave accumulated as at 1 April, 1985 shall be adjusted in hours in the ratio of 38 to 40.

13.—SICK LEAVE

(1) (a) An employee who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding 10 weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate. Provided that where an employee has had two absences on paid sick leave adjacent to other days off duty within a period of twelve months the employer may request in writing that any further absences adjacent to days off be accompanied by such certificate.

Provided that this request shall remain in force until the employee has completed a continuous period of twelve months without such absence.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 10.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 10.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of clause (2) of the Long Service Leave provisions published in volume 65 of the Western Australian Industrial Gazette at pages 1-4, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transferee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act 1981 nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) The provisions of this clause do not apply to casual employees.

(9) An employee shall not be entitled to claim payment for non-attendance on the ground of personal ill-health or injury nor will the employee's sick leave entitlements be reduced if such personal ill-health or injury occurs on a day when an employee is absent on an Accrued Day Off in accordance with the provisions of subclauses (1) and (2) of Clause 7.—Hours of this award unless such illness is for a period of seven consecutive days or more and in all other respects complies with the requirements of subclause (5) hereof.

(10) An employee whilst on paid sick leave shall continue to accrue an entitlement to an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.

14.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause—

(a) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from twelve to 52 weeks and shall include a period

of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

(b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

- (c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.
- (d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks—

- (a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.
- (b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment

- (a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

- (a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve months qualifying period.

(12) Effect of Maternity Leave on Accrued Day(s) Off

- (a) When an employee proceeds on maternity leave there will be no accrual towards an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.
- (b) When an employee proceeds on maternity leave the employer may pay an employee the amount of hours accrued towards an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.

(13) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of clause 2 of the Long Service Leave provisions published in Volume 66 of the Western Australian Industrial Gazette at pages 1-4, the entitlement to maternity leave as prescribed by this clause standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transferee and may be claimed in accordance with the provisions of this clause.

15.—COMPASSIONATE LEAVE

(1) An employee shall, on the death within Australia, of a wife, husband, de-facto wife or de-facto husband, father, father-in-law, mother, mother-in-law, brother, sister, child or stepchild be entitled on notice, of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of his employer.

(2) Provided that payment in respect of compassionate leave is being made only where the employee otherwise would have been on duty and will not be granted in any case where the employee concerned would have been off duty in accordance with his roster, or on long service leave, annual leave, sick leave, worker's compensation, leave without pay or on a public holiday.

(3) An employee shall not be entitled to claim payment for compassionate leave on a day when that employee is absent on an Accrued Day(s) Off in accordance with the provisions of subclauses (1) and (2) of Clause 7.—Hours of this award.

(4) An employee, whilst on compassionate leave prescribed by this clause shall continue to accrue an entitlement to an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.

16.—CONTRACT OF SERVICE

(1) The contract of service period shall be—

- (a) one hour for casual employees.
- (b) two weeks for all other employees.

(2) An employee may be engaged on a probationary period of not longer than three months, during which time it will be possible for either the employer or employee to terminate the contract of service with one day's written notice.

(3) The contract of service may be terminated by either the employer or employee by giving—

- (a) notice of one hour for casual employees.
- (b) written notice of two weeks for all other employees.

(4) Where an employee does not give the required period of notice of termination of services the wages payable for the contract of service period may be forfeited at the discretion of the employer.

(5) The employer may pay the wages payable for the contract of service period in lieu of notice of termination being given by either the employer or employee.

(6) The services of an employee may be terminated for serious misconduct without prior notice. In such circumstances

the employer is required to pay all monies owing up to the date of dismissal.

(7) (a) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training provided that such duties are not designed to promote de-skilling.

(b) An employer may direct, pursuant to paragraph (a) of this subclause, an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

(c) Any direction issued by an employer pursuant to paragraphs (a) and (b) of this subclause shall be consistent with the responsibility of the employer to provide a safe and healthy working environment in accordance with the provisions of the Occupational Health, Safety and Welfare Act, 1987 and Regulations.

17.—LAUNDRY AND UNIFORMS

(1) Where the employer requires a uniform to be worn, a supply of four such uniforms shall be made available for use by each employee but such uniforms shall at all times remain the property of the employer.

(2) In lieu of the provision of uniforms, the employer may pay an allowance of \$4.00 per week.

(3) The term "uniform" shall include all items of clothing and footwear which are specified by the employer, according to type or colour or according to the exclusion of ordinary clothing or footwear, to be worn.

(4) Each employee shall be entitled to all reasonable laundry work at the expense of the employer, but where the employer elects not to launder the uniforms, the employee shall be paid an allowance of \$1.05 per week.

(5) Liberty is reserved to the parties to apply as to the amount of the allowance as prescribed in subclauses (2) and (4) of this clause.

(6) Subject to the provisions of subclause (5) of this clause no claim shall be made to amend the provisions of this clause before 1 July, 1988. Except that in the case of employees at the Homes of Peace Inc. and Silver Chain Nursing Association Inc. the date of 1 April, 1988 shall apply in lieu of 1 July, 1988.

(7) Where employees are required to assist with showering duties they shall be provided with waterproof aprons and boots.

18.—ROSTERS

(1) A roster shall be posted in a convenient place where it can be readily seen by the employee concerned.

(2) Such roster shall be written in ink and shall denote the hours to be worked by each employee and shall be open for inspection by a duly accredited representative of the Union at all reasonable times.

(3) The roster shall be posted at least 48 hours before it comes into operation and may be altered by 48 hours' notice, but this shall not prevent a part time employee working additional shifts in accordance with subclause (5) of Clause 28.—Part Time Employees of this award.

(4) A roster for accrued days off may allow an employee to take accrued days off before they become due.

19.—TIME AND WAGES RECORD

(1) Each employer bound by this award shall maintain a record containing the following information—

- (a) the name and address given by each worker subject to this award
- (b) the date of birth of the worker if paid as a junior worker
- (c) the date on which each worker commenced employment with that employer
- (d) The classification and "year of employment" of the worker and whether the worker is employed full time, part time or casual
- (e) the commencing and finishing time of work each day, together with any periods between those times when the worker was not required to work

(f) the total number of ordinary hours and the total number of overtime hours worked each day

(g) the wages and any allowances paid to each worker each pay period and any deductions made therefrom

(2) (a) The record shall be kept at one establishment and in date order so that the inspections referred to in subclause (3) of this clause may be made with respect to any period in the twelve months preceding the date of inspection.

(b) The employer may, if it is part of normal business practice, periodically send the record or any part of the record to another person.

(3) (a) Subject to this clause the record shall be available for inspection by any officer of the union or other authorised representative of the union between the hours of 9.00 am and 5.00 pm Monday to Friday inclusive, at such time and date as requested by the union, subject to the reasonable availability of the employer or the employer's representative.

(b) The officer of the union or other authorised representative of the union shall be permitted reasonable time to inspect the record and, if required, take an extract or copy of any of the information contained therein.

(c) The employer shall permit each worker to inspect the records as it relates to that worker either at the time of payment of wages or at such other times as may be mutually convenient. The employer shall not unreasonably withhold the record from inspection by the worker.

(4) (a) If, for any reason, the record is not available for inspection at the time and date requested, the Union and the employer or his agent may fix a mutually convenient time for the inspection to take place.

(b) If a mutually convenient time cannot be fixed, the Union may advise the employer in writing that it requires to inspect the record in accordance with the provisions of this award and shall specify the period contained in the record which it requires to inspect.

(c) Within 10 days of the receipt of such advice—

- (i) employers who normally keep the record at a place more than 35 kilometres from the G.P.O. Perth shall send a copy of that part of the record specified to the office of the Union, and,
- (ii) employers who normally keep the record at a place less than 35 kilometres from the G.P.O. Perth shall make the record available to the Union at a time specified by the Union.

(d) In the event of a demand made by the Union which the employer considers unreasonable, the employer may apply to the Western Australian Industrial Relations Commission for direction. An application to the Western Australian Industrial Relations Commission made by an employer for direction will, subject to that direction, stay the requirements contained elsewhere in this subclause.

(5) In addition to the foregoing, the employer shall maintain for the duration of the employees employment, a record in respect of each employee showing—

- (a) Name and classification.
- (b) Total hours worked each week.
- (c) Number of days worked each week.
- (d) Total wages paid each pay period.

(6) Records required to be kept by this clause shall be passed on to any succeeding employer in the event that the business is sold or transmitted.

20.—INTERVIEWS

(1) An accredited representative of the Union shall be entitled to enter the business premises of the employer and interview an employee subject to the following—

- (a) on arrival at the workplace the union representative shall seek permission to enter the premises from the employer or his senior representative.
- (b) Agreement between the union representative and the employer shall be sought as to where and subject to what conditions the employee may be interviewed or work inspected.

(2) Failing agreement on the foregoing, the following shall apply—

On giving prior notice in writing or by telephone to the employer or his appointed representative, or failing that person being available, the most senior person in charge of the establishment, an accredited representative of the Union shall be entitled to enter the business premises of the employer to interview an employee during the recognised meal period at the place at which the meal is usually taken, provided that this right shall not be exercised without the consent of the employer more than once in any one week, however the employer does not have the right to refuse the first occasion in any one week provided prior notice has been given. If access has not been gained in accordance with the provisions of this clause then the union representative shall leave immediately upon a request from the employer or, his appointed representative or senior person in charge.

21.—NOTICES

If the Union so requests, a copy of this award shall be posted on a board of reasonable size in the place where it may be conveniently and readily be seen by every worker concerned. The Union Secretary may also post thereon such other notices relating to Union matters as are reasonable.

22.—DEDUCTIONS FOR LODGING

(1) Where employees are provided with Lodging by the employer, the following charges, or deductions as the case may be, may be made by the employer—

Lodging	\$14.90 per week
Lodging for employees sharing rooms	\$7.50 per week
Lodging for self contained furnished single accommodation within hospital grounds	\$24.60 per week

For the purposes of this clause "Lodging" means a room constituting a bedroom, together with communal toilet, laundry and sitting room facilities.

(2) (a) The amounts herein prescribed shall be varied as the result of State Wage Case variations to the rate of wage for a Registered General Nurse (First Year) under the Nurses' (Private Hospitals) Award, by the same proportion and at the same time.

(b) Any variation to the lodging charges shall be calculated to the nearest ten cents.

23.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK \$
Agnew	14.80
Argyle (see subclause (12))	38.50
Balladonia	14.60
Barrow Island	25.10
Boulder	6.10
Broome	23.60
Bullfinch	7.00
Carnarvon	12.00
Cockatoo Island	25.90
Coolgardie	6.10
Cue	15.10
Dampier	20.40
Denham	12.00
Derby	24.50
Esperance	4.50
Eucla	16.50
Exmouth	21.10
Fitzroy Crossing	29.60
Goldsworthy	13.50
Halls Creek	33.70
Kalbarri	5.00
Kalgoorlie	6.10
Kambalda	6.10
Karratha	24.20

TOWN	PER WEEK \$
Koolan Island	25.90
Koolyanobbing	7.00
Kununurra	38.50
Laverton	15.00
Learmonth	21.10
Leinster	14.80
Leonora	15.00
Madura	15.60
Marble Bar	36.70
Meekatharra	13.00
Mt Magnet	16.10
Mundrabilla	16.10
Newman	14.20
Norseman	12.50
Nullagine	36.60
Onslow	25.10
Pannawonica	19.10
Paraburdoo	19.00
Port Hedland	20.30
Ravensthorpe	7.90
Roebourne	27.80
Sandstone	14.80
Shark Bay	12.00
Shay Gap	13.50
Southern Cross	7.00
Telfer	34.10
Teutonic Bore	14.80
Tom Price	19.00
Whim Creek	24.00
Wickham	23.40
Wiluna	15.10
Wittenoom	32.50
Wyndham	36.40

(2) Except as provided in subclause (3) of this clause, an employee who has—

- a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee—

- is provided with board and lodging by his/her employer, free of charge;
or
- is provided with an allowance in lieu of board and lodging by virtue of the award or an Order or Agreement made pursuant to the Act;

such employee shall be paid $66\frac{2}{3}$ per cent of the allowances prescribed in subclause (1) of this clause.

The provisions of paragraph (b) of this subclause shall have effect on and from the 24th day of July, 1990.

(4) Except where an employee is eligible for payment of an additional allowance under subclause (2) of this clause, but on 31 December 1987 was in receipt of an amount in excess of that under General Order 603 of 1987, that employee shall continue to receive the allowance at the higher rate until 1 July 1988 when the difference between the rate being paid and that due under subclause (2) of this clause shall be reduced by $33\frac{1}{3}\%$; the difference remaining on 1 January 1989 shall be reduced by 50% from that date and payment in accordance with subclause (2) of this clause will be implemented on 1 July 1989.

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(8) For the purposes of this clause—

(a) “Dependant” shall mean—

- (i) a spouse or defacto spouse; or
- (ii) a child where there is no spouse or defacto spouse;

who does not receive a district or location allowance, but shall exclude a dependant whose salary/wage package includes a consideration of the purposes for which the location allowance is payable pursuant to the provisions of this clause.

(b) “Partial Dependant” shall mean a “dependant” as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any ‘district allowance’ payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

24.—CASUAL EMPLOYEES

A casual employee shall be paid twenty five per cent over the rates specified herein for her class of work.

25.—SHIFT WORK AND WEEKEND WORK

(1) (a) Where on any day a worker commences her ordinary hours of work before 4.00 a.m. or after 12.00 noon, she shall be paid a loading with respect to those ordinary hours of 12½%.

(b) The provisions of paragraph (a) of this subclause do not apply to a worker who on any day commences her ordinary hours of work after 12.00 noon and completes those hours before 6.00 p.m. on that day.

(c) Where a worker works a broken shift each portion of that shift shall be considered a separate shift for the purpose of this clause provided that a shift broken by a meal break of one hour or less shall not constitute a broken shift.

(2) (a) Subject to the provisions of subclause (4) of this clause all work performed during ordinary hours on a Saturday or Sunday shall be paid at the rate of time and one half.

(b) The rates prescribed in this subclause shall be in substitution for and not cumulative on the rates prescribed in subclause (1) of this clause.

(3) Where a worker’s rostered hours of duty in any day are extended by an early start or a late finish the shift work or weekend rates as the case may be shall be paid for such additional time worked in addition to any overtime payable under clause 8—Overtime of this award.

(4) Where the ordinary hours of work span 12.00 midnight on a Friday night or Sunday night the additional payments for shift work and work during the weekend may be made at the option of the employer—

- (a) by calculation for the whole shift according to the rate of the additional payment for the greater part of the shift; or
- (b) by calculation for each part of the shift according to the rate applicable for additional payment for shift work and work during the weekend as the case may be.

Provided that having decided on one method of calculation the employer shall give at least two weeks’ notice of intention to change to the other method and any such change shall be given effect with respect to the shift commencing on a Friday.

(5) The following provisions shall apply in lieu of the foregoing for the period on and from 1 July, 1991 pending a decision of the Western Australian Industrial Relations Commission with respect to the provisions of this clause.

(6) (a) Where on any day an employee commences ordinary hours of work before 4.00am or after 12.00 noon, they shall be paid a loading with respect to those ordinary hours of 15%.

(b) The provisions of paragraph (a) of this subclause do not apply to an employee who on any day commences ordinary hours of work after 12.00 noon and completes those hours before 6.00pm on that day.

(c) Where an employee works a broken shift each portion of that shift shall be considered a separate shift for the purpose of this clause provided that a shift broken by a meal break of one hour or less shall not constitute a broken shift.

(7) (a) Subject to the provisions of subclause (9) of this clause all work performed during ordinary hours on a Saturday shall be paid at the rate of time and one half and on a Sunday at the rate of time and three quarters.

(b) The rates prescribed in this subclause shall be in substitution for and not cumulative on the rates prescribed in subclause (1) of this clause.

(8) Where an employee’s rostered hours of duty in any day are extended by an early start or a late finish the shift work or weekend rates as the case may be shall be paid for such additional time worked in addition to any overtime payable under Clause 8.—Overtime of this award.

(9) Where the ordinary hours of work span 12.00 midnight on a Friday night or Sunday night the additional payments for shift work and work during the weekend may be made at the option of the employer—

- (a) by calculation for the whole shift according to the rate of the additional payment for the greater part of the shift; or
- (b) by calculation for each part of the shift according to the rate applicable for additional payment for shift work and work during the weekend as the case may be.

Provided that having decided on one method of calculation the employer shall give at least two weeks’ notice of intention to change to the other method and any such change shall be given effect with respect to the shift commencing on a Friday.

26.—PAYMENT OF WAGES

(1) Wages shall be paid by cheque, direct transfer or cash at the employer’s discretion following consultation with the employees.

(2) (a) (i) Where the employer requires the employee to establish an account for the purpose of receiving his/her wages the employee shall pay the costs associated with the establishment and maintenance of such account.

(ii) The employer may require such an account to be established at a major bank or building society.

(b) In respect of transfer fees associated with the transfer of funds from the employer’s bank to any other bank or financial institution, such fees shall be paid by the employer.

(3) In the case of payment by cheque the employer shall arrange encashment facilities at a branch of a bank in close proximity to the place of work. Where it is impractical for the employee to cash the cheque on pay day, reasonable access to

the facility shall be allowed by the employer during working time.

(4) If, for reasons within the control of the employer, wages are not available at the nominated time and the employee is kept waiting for a period exceeding 30 minutes, overtime rates shall apply, provided that in the case of an employee rostered for duty on that day, the 30 minute period shall commence from the employee's finishing time.

(5) No deduction shall be made from an employee's wages unless the employee has agreed to such deduction in writing, or the deduction is authorised by the award.

(6) Each employee shall be provided with a pay advice slip on each day that wages are paid. The pay advice slip shall detail—

- (a) the rate of wage
- (b) the hours worked, including overtime
- (c) the gross wage
- (d) the net wage
- (e) any allowances paid
- (f) any deductions made
- (g) the composition of any annual leave payment
- (h) the composition of any termination payment.

(7) Wages shall be paid fortnightly, provided that by agreement between the employer and the Union, wages may be paid at other intervals.

(8) Subject to subclause (9) hereof, upon termination of employment, the employer shall pay to the employee all monies earned by or payable to the employee before the employee leaves the hospital or the same shall be forwarded to the employee by post on the next working day following termination.

(9) Where an employee terminates his or her employment without notice as required by Clause 16.—Contract of Service of this award, the employer shall forward as soon as reasonably possible all monies earned by or payable to such employee to that employee by post.

(10) If an employee fails to collect his or her wages on the appointed day, such wages shall thereafter be available for collection (at previously notified times) during office hours.

(11) Accrued Days Off which accrue prior to the first pay period commencing on or after 14 July 1988 shall be paid as follows—

- (a) An employee who regularly performs shift or weekend work shall be paid for accrued days off, including shift or weekend penalties, when those days are taken as leave for the hours worked during which the leave was accumulated and shall be paid at the rate applicable at the time the leave is taken.
- (b) An employee who performs shift or weekend work irregularly shall be paid for accrued days off the average of shift or weekend penalties paid in the preceding month.

(12) Accrued Days' Off which accrue from the first pay period commencing on or after 14 July 1988 shall be paid at the ordinary rate of wage, exclusive of penalties, which an employee would normally receive for his/her class of work.

27.—CALCULATION OF PENALTIES

Where an employee works hours which would entitle that employee to payment of more than one of the penalties payable in accordance with Clause 8.—Overtime, Clause 11.—Public Holidays and Clause 25.—Shift Work and Weekend Work only the highest of any such penalty shall be payable.

28.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained herein, an employer shall be at liberty to employ part-time employees.

(2) Part-time employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which they are engaged only in the proportion which their ordinary weekly hours bears to forty.

(3) Part-time employees shall be allowed annual leave and sick leave in the same manner as full time employees. Payment for such leave shall be in the same ratio as their ordinary weekly hours, averaged over the qualifying period, bear to forty.

(4) (a) The laundry and uniform allowances prescribed in this award shall be paid pro rata to part time employees in the proportion that the hours worked each week bear to 40.

(b) A part-time employee working 3 shifts or less each week shall be supplied with one uniform per shift each week.

(5) A part-time employee may work shifts additional to the rostered shifts at ordinary rates, subject only to the normal rostering parameters of a full-time employee, where the employee has previously indicated a willingness to work extra shifts or where the extra shift was arranged prior to the completion of the employee's previous shift. Provided that a part-time employee shall not be required to work an extra shift.

29.—TEMPORARY EMPLOYEES

A temporary employee shall accrue and be paid all the benefits prescribed by this award for time worked as if the employee was permanently employed, notwithstanding breaks in employment, and shall be entitled to or give, as the case may be, one week's notice of termination of the contract of service, and shall either be paid or forfeit, as the case may be, one week's pay if the required notice is not given.

30.—WAGES

(1) The minimum rate of wage payable to employees covered by this award shall be as follows—

	Base Rate Rate \$	1st, 2nd & 3rd Arbitrated Safety Net Adjustments \$	Minimum Weekly Rate \$
(a) Trainee Enrolled Nurse			
1st year of training	278.90	24.00	302.90
2nd year of training	316.90	24.00	340.90
(b) Enrolled Nurse Level One			
1st year of employment	419.10	24.00	443.10
2nd year of employment	424.10	24.00	448.10
3rd year of employment and thereafter	435.00	24.00	459.00
(c) Enrolled Nurse Level Two			
1st year of employment	428.20	24.00	452.20
2nd year of employment	433.30	24.00	457.30
3rd year of employment and thereafter	444.10	24.00	468.10
(d) Enrolled Nurse Level Three	456.30	24.00	480.30
(e) Nursing Assistant (at 19 years of age and over)			
1st year of employment	377.70	24.00	401.70
2nd year of employment	388.00	24.00	412.00
3rd year of employment and thereafter	398.50	24.00	422.50
(f) Nursing Assistant (under 19 years of age) shall be paid a percentage of the total weekly wage prescribed for a Nursing Assistant in their first year of employment in subclause (1)(e) hereof as follows—			
Under 17 years of age		73%	
Under 18 years of age		81%	
Under 19 years of age		87%	

(g) Provided that an Enrolled Nurse undergoing training in a post basic course approved by the Nurses' Board of W.A. will be paid the "1st year of employment" rate of wage at the appropriate level during the training period.

(h) Provided further that an Enrolled Nurse (Student) who is 21 years of age or over shall be paid at the rate applicable to a Nursing Assistant (at 19 years of age and over) at the "first year of employment" rate.

(i) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase

or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(2) (a) The rate of wage prescribed in subclause (1) of this clause for an enrolled nurse student shall be varied so as to maintain the relationship that exists as at the date of this order with the rates prescribed for a student nurse in his/her first and second years of experience as contained in the Nurses' (Private Hospitals) Award No. 1 of 1966.

(b) No employee, who at the date of this order was in receipt of a rate of wage higher than that prescribed herein for his/her classification of work, shall have that rate reduced by the operation of this clause.

(c) A nursing assistant who has completed his/her first year of employment and who is accepted for training as an enrolled nurse shall be paid not less than he/she would have received had he/she continued as a Nursing Assistant.

(d) Any employee who has passed the examination for registration prescribed by the Nurses' Board of Western Australia shall, for the purpose of this clause, be deemed to be an enrolled nurse.

(3) (a) When the term "year of employment" is used in this clause it shall mean all service whether full time or part time in any of the classifications contained in this award with any hospital covered by this award and shall be calculated in periods of completed months from the date of commencement of work covered by this award.

(b) The service referred to in paragraph (a) hereof may be increased by any similar service with hospitals not covered by this award, and in the event of a dispute between an employer and the Union over the inclusion of such service for the purpose of determining the year of employment the dispute may be referred to the Industrial Relations Commission for determination.

(c) Employees shall be paid the rates shown in this clause according to their year of employment calculated in accordance with the provisions of this subclause subject to satisfactory performance. Proof of previous service, if required by the employer, shall rest on the employee; provided that production of the certificate or certificates referred to in paragraph (d) hereof shall be sufficient proof for the purpose of this paragraph.

(d) Each employee whose service terminates shall at the time of termination be given a certificate signed by the employer in which shall be stated the name of the employee, the period of service, whether the service was full time or part time and the classifications in this award in which work has been carried out.

Provided that where an employee terminates without that employee having given the prescribed period of notice, the employer shall be under no obligation to provide the certificate at the time of termination. The employee shall however, be entitled to request and receive the certificate at any time after the termination.

(4) Minimum Wage: No employee employed under this award who is 21 years of age or over shall receive less than the minimum wage prescribed from time to time by the Western Australian Industrial Relations Commission.

(5) The hourly rate for an employee working an average of 38 hours per week shall be calculated by dividing the weekly rate herein expressed by 40.

(6) The hourly rate for an employee actually working 38 hours shall be calculated by dividing the weekly rate herein expressed by 38.

31.—LIBERTY TO APPLY

(1) Overtime—as to application to part-time workers.

32.—FARES AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required during his/her normal working hours by his/her employer to work outside his/her usual place of employment, the employer shall pay the employee any reasonable travelling expenses incurred except where an allowance is paid in accordance with subclause (2) of this clause.

(2) (a) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedules set out hereunder. Notwithstanding anything contained in this subclause, the employer and the employee may make any other arrangements as to car allowance not less favourable to the employee.

(b) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(c) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June next following.

Rates of hire for use of employee's own vehicle on employer's business.

Schedule 1—Motor Car Allowance

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
	Rate per kilometre		
Metropolitan Area	49.4	43.5	37.9
South West Land Division	50.5	44.6	38.9
North of 23.5° South Latitude	56.2	50.0	43.5
Rest of the State	52.2	46.0	40.0

Schedule 2—Motor Cycle Allowance

Distance Travelled During a Year on Official Business	Rate ¢/km
Rate per kilometre	17.1

33.—EFFECT OF 38 HOUR WEEK

(1) Termination

(a) An employee subject to the provisions of subclause (1) of Clause 7.—Hours of this award who has not taken any Accrued Day(s) Off accumulated during a work cycle in which employment is terminated, shall be paid the total of hours accumulated towards the Accrued Day(s) Off for which payment has not already been made.

(b) An employee who has taken any Accrued Day(s) Off during a work cycle in which employment is terminated shall have the wages due on termination reduced by the total hours for which payment has already been made but for which the employee had no entitlement toward those Accrued Day(s) Off.

(2) Workers' Compensation

(a) 20 Day Work Cycle

(i) Where an employee is on employees' compensation for periods for less than one complete 20 days work cycle, such employee will accrue towards and be paid for the succeeding Accrued Day Off following such absence.

(ii) An employee will not accrue Accrued Day(s) Off for periods of employees' compensation where such period of leave exceeds one or more complete 20 days work cycle.

(iii) Where an employee is on workers' compensation for less than one complete 20 day work cycle and an Accrued Day Off falls within the period, the employee will not be re-rostered for an additional Accrued Day Off.

(b) 12 Months' Work Cycle

(i) Where an employee is on employees' compensation for period for less than a total of 20 consecutive work days in a work cycle such employee will accrue towards and be paid for the succeeding Accrued Day(s) Off following such leave.

(ii) Where an employee is on employees' compensation for periods greater than a total of 20 consecutive days in a work cycle such employee will have the period of employees' compensation added to the work cycle.

- (iii) Where an employee is on workers' compensation for greater than 20 consecutive work days and an Accrued Day Off as prescribed in subclause (1) of Clause 7.—Hours of this award falls within the period the employee shall be re-rostered for another Accrued Day Off on completion of the 20 day work cycle following such absence.

(3) Leave Without Pay

An employee who is absent on any form of leave without pay shall not accumulate an entitlement to an Accrued Day Off for the period of such leave nor will the employee be entitled to an Accrued Day Off whilst on leave without pay.

(4) Pay Out of Entitlements

An employee whose hours are worked in accordance with Clause 7(1)(a) and who, after 12 months employment, is to take the full six consecutive weeks annual leave prescribed by Clause 15.—Annual Leave of this award may by mutual written agreement, be paid at the time of taking such annual leave, for any Accrued Day(s) Off then standing to the credit of that employee. Such payment will be in full discharge of any liability on the employer arising pursuant to Clause 7.—Hours of this award. An employee shall not otherwise be paid for Accrued Day(s) Off without actually taking them as days off.

34.—PAYROLL DEDUCTION OF UNION DUES

(1) The employer shall deduct normal subscriptions as equal amounts each pay period.

(2) Payroll Deduction Authority forms shall be completed by employees. Where the employer requires a standard pro-curation form, that form shall be used. The pro-curation form on the Union Application For Membership form shall be deemed to comply with the requirements of this subclause.

(3) Where required by the employer or Union, the Union Secretary, or person acting in his/her stead, shall countersign all forms and forward them to the employer's pay clerk.

(4) (a) The employer shall commence deduction of subscriptions from the first full pay period following receipt of a completed Payroll Deduction Authority form and continue deducting throughout the employee's period of employment, except as provided in subclauses (5) and (8) of this clause or until the Authority is cancelled in writing by the employee.

(b) Where the Payroll Deduction Authority form authorises the employer to deduct union subscriptions in accordance with the rules of the Union, the Union shall notify the employer in writing of the level of union subscription to be deducted. The employer shall implement any change to union subscriptions no later than one month after being notified by the Union except where the Union nominates a later date.

(5) (a) The collection of any nomination fee, arrears, levies or fines are not the responsibility of the employer.

(b) Where a deduction is not made from an employee in any pay period, either inadvertently or as a result of an employee not being entitled to wages sufficient to cover the subscription, it shall be the employee's responsibility to settle the outstanding amount with the Union direct.

(6) The employer shall not make any deduction of subscriptions from an employee's termination pay on termination of service, other than normal deductions for the preceding pay period.

(7) The employer shall forward subscriptions deducted, together with supporting documentation, to the relevant Union party to this award at such intervals as are agreed between the employer and the Union.

(8) Notwithstanding the above—

- (a) deductions shall be at the employer's discretion;
- (b) deductions shall only be made if the employer and the Union can agree on a commission rate;
- (c) the employer may stop deductions in the event of Union commencing industrial action;
- (d) an exemption from the provisions of this clause shall be granted to an employer who notifies the Industrial Registrar that they object to the provisions of this clause being applied to them and forward a copy of such notice to the Union.

- (e) an existing employer wishing exemption from the provisions of this clause shall notify the Industrial Registrar as provided in subclause (1) hereof within 3 months of the coming into operation of this clause.

35.—DISPUTE SETTLEMENT PROCEDURES

(1) Subject to the provisions of the Industrial Relations Act 1985 (as amended) any grievance, complaint or dispute, or any matter raised by the Union or a respondent and employees, shall be settled in accordance with the procedure outlined in this clause.

(2) These procedures have been developed by agreement between the parties. The Union recognises the right and responsibility of Private Health Employers to provide uninterrupted and efficient services to the Community. The employer recognises the rights and responsibilities of the Union to represent its members in compliance with its rules.

(3) The procedure is also intended to provide effective and speedy means for resolution of employee difficulties and problems.

(4) Depending on the issues involved, the size of the organisation and the union membership of the employees concerned, a procedure involving the following stages of discussion shall apply. These are—

- (a) discussions between the employee/s concerned and the immediate supervisors;
- (b) discussions involving the employee/s concerned, (and an elected on site union representative if requested), the employer representative or senior officer;
- (c) senior officer to resolve issue, if unable to refer to Senior Management. Employee may notify Union at this stage if desired;
- (d) discussions involving union officials and/or site union representatives and senior management representative(s).

(5) Sensible time limits shall be allowed for the completion of the various stages of the discussions. At least seven days should be allowed for all stages of the discussions to be finalised.

(6) Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved the parties may jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving that dispute.

(7) Where the employer seeks to discipline an employee, or terminate an employee the following steps shall be observed—

- (a) In the event that an employee commits a misdemeanour, the employee's immediate supervisory or any other staff member so authorised, may exercise the employer's right to reprimand the employee so that the employee understands the nature and implications of their conduct.
- (b) The first two reprimands shall take the form of warnings and, if given verbally, shall be confirmed in writing as soon as practicable after the giving of the reprimand.
- (c) Should it be necessary, for any reason, to reprimand an employee three times in a period not exceeding twelve months' continuous service, the contract of service shall, upon the giving of that third reprimand, be terminable in accordance with the provisions of this award.
- (d) The status quo (ie. the conditions applying prior to the issue arising) will remain until the issue is resolved in accordance with the procedure outlined above.

(8) In resolving issues of an industry wide nature discussions which may be initiated at the level specified in paragraph (d) of subclause (4) of this clause, between the appropriate Union official and the Employer, shall then be referred to the Health Care Management committee of the Confederation of W.A. Industry by either or both parties.

(9) For the purposes of this procedure—

“employer” means the relevant officer nominated at each work site.

“senior officer” means an officer nominated by management.

“industry wide issues” include issues affecting more than one work site or claims seeking variations to an award.

“work site” means as agreed between the parties.

(10) The parties to this award are committed to implementing a new wage and classification structure.

To allow this to occur in an orderly and efficient manner the parties agree that when the award is varied to insert a new wage and classification structure, the disputes settling procedure clause will be varied to provide a mechanism for dealing with claims by existing employees on the appropriateness of their classification in the new structure.

(11) The parties acknowledge that this procedure formed part of the package which justified the payment of the increases available under the Structural Efficiency Principle.

(12) Accordingly, the parties agree that if either party is of the view that the other party is in breach of this procedure, the matter will be referred to the Western Australian Industrial Relations Commission for it to determine—

- (a) whether a breach of the procedure has occurred; and
- (b) subject to (12)(a) above, the appropriateness of the continued provision of the benefits provided under the Structural Efficiency Principle or any other action considered appropriate by the Commission.

36.—INTRODUCTION TO CHANGE

(1) Where an employer has made a definite decision to introduce major changes that are likely to have significant effects on employees, the employer shall notify employees who may be affected, and their Union.

(2) As soon as practicable the employer shall enter into discussions with employees on issues involved in the changes.

(3) The employer shall discuss with the Union any matters raised in relation to the changes.

37.—STRUCTURAL EFFICIENCY IMPLEMENTATION TASKS

(1) The parties to this award are committed to co-operating positively to increasing efficiency and quality of care in the industry and, to enhancing the career opportunities and job security in the industry in accordance with the structural efficiency principle outlined in the Commission in Court Session Decision in Matter No 704 of 1991.

(2) At the private health industry level a formal consultative mechanism between representatives of the employers and representatives of the Union shall be established to consider measures raised by the employers or Union that are consistent with the objectives of subclause (1) of this clause.

(3) The Industry Consultative Committee referred to in subclause (2) of this clause shall determine its own procedures and terms of reference and will meet within two months of this clause being ratified by the Western Australian Industrial Relations Commission.

(4) The Industry Consultative Committee will meet at least six times per year and more often where agreed between the parties.

(5) The Industry Consultative Committee shall give priority to the following issues—

- the implementation of a new wage and classification structure;
- an examination of skills in the industry;
- minimum rates adjustments; and
- the drafting of an appropriate award clause on enterprise consultation, as soon as reasonably practicable, and consistent with the relevant State Wage Principles.

(6) Nothing in this clause shall limit the rights of any of the parties to the award to conciliation and/or arbitration in the Western Australian Industrial Relations Commission.

38.—ENTERPRISE FLEXIBILITY PROVISIONS

(1) Subject to the provisions contained elsewhere in this clause an employer, and an employee or group of employees, covered by this Award may reach agreement upon terms and

conditions of employment to meet the requirements of the employers enterprise and the aspirations of the employee or employees.

(2) Where a matter arises for consideration between an employer, and an employee or group of employees which—

- (a) were it to be settled between them as a term of an enterprise flexibility agreement such a term would be inconsistent with a provision of this Award, and
- (b) were an inconsistent term of any such agreement to be given legal force and effect it would apply to a current employee who is known to the employer to be a member of the Union, and
- (c) if it be intended that the Western Australian Industrial Relations Commission be requested to exercise its powers to give legal force and effect to such an inconsistent term of any agreement, the employer shall notify the Union of the matter raised for consideration as soon as reasonably practicable after it arises and before the matter is settled as a term of any agreement.

(3) Nothing in this clause shall prevent an employee seeking advice from, or being represented by, the Union during negotiations with the employer.

(4) No employee shall lose any existing entitlement to earnings for working ordinary hours of work as a result of the implementation of an enterprise flexibility agreement, provided that an employer and an employee or groups of employees may agree on terms and conditions in the aggregate no less favourable to the employees than those prescribed by this Award for working ordinary hours of work.

(5) Where an enterprise flexibility agreement is made with the genuine consent of the employer and the majority of the employees covered by the scope of that agreement, the Union shall not unreasonably oppose the terms of the agreement.

(6) Any enterprise flexibility agreement made between the employer, and an employee or group of employees, shall be committed to writing and, if the Union participated in the related negotiations or it is intended that the agreement be given legal force and effect by the Western Australian Industrial Relations Commission pursuant to the Industrial Relations Act, 1979, the employer shall forward a copy of the agreement to the Secretary of the Union.

(7) An enterprise flexibility agreement made pursuant to this clause is entered into on the condition that, if an application be made to the Western Australian Industrial Relations Commission to give it legal force and effect by means of a variation to this Award, such variation is subject to the approval of the Western Australian Industrial Relations Commission and will, if approved, be made in the form of a schedule to this Award.

(8) Nothing in this clause shall be taken as limiting a right to apply the Western Australian Industrial Relations Commission to have the Commission exercise any one of its several powers that enable the Commission to give legal force and effect to an enterprise flexibility agreement.

PART 11

1.—LONG SERVICE LEAVE

(1) The conditions contained in the document Long Service Leave Conditions—State Government Wages Employees as consolidated by the Public Service Board in May 1974 shall apply to workers covered by this award with the exception that on and from 1st day January 1979 long service leave for the second and subsequent period of service shall accrue at the rate of thirteen weeks leave for seven years of continuous service.

(2) Any qualifying service, prior to 1 January 1979 for the second period of long service leave, shall be calculated on a ten year qualifying period basis but all qualifying service after 1 January 1979 shall be calculated on a seven year qualifying period basis.

2.—SICK LEAVE

(1) (a) A worker shall be entitled to payment for non attendance on the ground of personal ill health or injury for one sixth of a week's pay for each completed month of service.

(b) Payment hereunder may be adjusted at the end of each accruing year, or at the time the worker leaves the service of

the employer, in the event of the worker being entitled by service subsequent to the sickness in that year to a greater allowance than that made at the time the sickness occurred.

(2) The unused portion of the entitlement prescribed in paragraph (a) hereof in any accruing year shall be allowed to accumulate and may be availed of in the next or any succeeding year.

(3) In order to acquire entitlement to payment in accordance with this clause the worker shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) No worker shall be entitled to the benefit of this clause unless he produces proof to the satisfaction of the employer or his representative of such sickness provided that the employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker who suffers personal ill health or injury during the time when he is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the worker of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Part 1 Clause 10.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Part 1 Clause 10.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose illness or injury is the result of the worker's own misconduct.

(7) The provisions of this clause do not apply to casual workers.

(8) A rostered worker, proceeding on sick leave, shall be paid the shift and weekend penalties he would have received had he not proceeded on sick leave.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENTS

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Any dispute or grievance procedure in this award/industrial agreement shall also apply to any questions, disputes or difficulties which may arise under it.

(3) This Appendix shall come into effect on and from 16 August 1996.

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award—
The Federated Miscellaneous Workers' Union of Australia,
W.A. Branch.

SCHEDULE B—RESPONDENTS

St. John of God Hospital, Subiaco
St. Anne's Hospital, Mt. Lawley
South Perth Community Hospital, Como
Oats Street Hospital, Victoria Park
Homes of Peace (Incorporated), Subiaco
St. George's Nursing Home, Mt. Lawley
Carinya Nursing Home, Bicton
Annesley Private Hospital, Mt. Lawley
The Association of the Blind of W.A. (inc) Victoria Park
The Spastic Welfare Association of W.A. (inc) Mt. Lawley
Ramsay Health Care Pty Ltd T/a Hollywood Private Hospital

SCHEDULE C—RAMSAY HEALTH CARE PTY LTD

HOLLYWOOD PRIVATE HOSPITAL PROVISIONS

1.—ARRANGEMENT

1. Arrangement
2. Incidence and Application
3. Supersession
4. Date and Period of Operation
5. Definitions
6. Conditions of Employment

2.—INCIDENCE AND APPLICATION

This Schedule shall apply to enrolled nurses registered under Division 2 of the Nurses Act (WA) and employed by Ramsay at the Hollywood Private Hospital.

3.—SUPERSESSION

This Schedule supersedes for the Employees to which it applies the General Conditions of Service Australian Government Employment Award 1985 and the Commonwealth Redundancy Provisions Australian Government Employment Award 1986 PROVIDED that no right of action, obligation or liability accrued or incurred under those awards shall be affected by such supersession.

4.—DATE AND PERIOD OF OPERATION

This Schedule shall come into operation on the 23rd of February 1994, and shall remain in force for a period of one year.

5.—DEFINITIONS

The following definitions shall apply for the purposes of this Schedule—

- (1) "APS" means the Australian Public Service.
- (2) "Employee" means all enrolled nurses registered under Division 2 of the Nurses Act (WA) and employed by Ramsay at the Hollywood Private Hospital.
- (3) "Ramsay" means Ramsay Health Care Pty Ltd ACN 003 184 889.
- (4) "Transferred Employee" means an Employee who was employed by the Commonwealth at Hollywood Hospital immediately prior to the 23rd of February 1994, and who was subsequently employed by Ramsay on the 23rd of February 1994.

6.—CONDITIONS OF EMPLOYMENT

(1) Subject to subclause (2) of this clause, the salaries and other conditions of employment of Employees shall be those provided in Part I of the award as varied and in force from time to time or in any award replacing or superseding the award.

(2) Notwithstanding subclause (1) of this clause, the following conditions shall be provided and prevail to the extent of any inconsistency with the terms specified in subclause (1) of this clause, to each Transferred Employee—

- (a) Sick leave credits—

All APS sick leave credits available to a Transferred Employee as at the date of his or her resignation from the APS shall be recognised and counted as such by Ramsay.

(b) Long Service Leave—

Prior APS service shall count towards the minimum qualifying period of service required under the long service leave provisions provided in relevant West Australian State legislation.

In the calculation of future entitlements, where there is no grant of leave or payment in lieu in respect of APS Service, Ramsay will recognise credits at 3/10th of a month per year of service (or part thereof) in respect of APS Service.

“Prior APS service” means service which a Transferred Employee has had recognised under the Long Service Leave (Commonwealth Employees) Act 1976, at the date of resignation from APS employment.

(c) Maternity leave—

Twelve weeks paid leave shall be granted to a Transferred Employee where, within a period of maternity leave, the Transferred Employee's mandatory period of absence commences at any time up to the 23rd of March 1995. Payment of the twelve weeks will be in accordance with the APS provisions where the Transferred Employee would have been eligible for payment had they remained in the APS.

(d) Redundancy—

To enable the Commonwealth to fulfil its continuing obligations, Ramsay shall notify to the Secretary of the Department of Veteran's Affairs the name of any Transferred Employee who is made redundant within three years of the commencement of this award. Transferred Employees shall be considered to have been made redundant if employment is terminated because—

- (i) they are included in a class of employees employed at the Hollywood Private Hospital, which class comprises a greater number of employees than is necessary for the efficient and economical working of the Hollywood Private Hospital; or
- (ii) their services can not be effectively used because of technological or other changes in the work methods of the Hollywood Private Hospital or changes in the nature, extent or organisation of the functions of the Hollywood Private Hospital.

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award/industrial agreement/order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award/industrial agreement/order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement/order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and

- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

Dated at Perth this 26th day of April 1979.

FOOD INDUSTRY (FOOD MANUFACTURING OR PROCESSING) AWARD No. A20 of 1990.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 1st day of September, 1997.

J. SPURLING.
Registrar.

Food Industry (Food Manufacturing or Processing) Award

1.—TITLE

This award shall be known as the Food Industry (Food Manufacturing or Processing) Award and shall replace the following awards with effect on and from the 1st day of March 1991—

- Biscuit and Cake Manufacturing Award, 1971;
- The Frozen Foods Award 1977;
- Fruit and Vegetable Processing and Packing Award 1978;
- Grocery and Match Manufacturing Award No. 11 of 1971;
- Ice Cream and Frozen Confectionery Manufacturing Award 1982.

And replaces as of the 27th day of November 1992—

- Confectionery Manufacturing Award 1968.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
- 1A Statement of Principles—August 1996
2. Arrangement
3. Scope
4. Area
5. Term
6. Objects
7. Absence Through Sickness
8. Bereavement Leave
9. Long Service Leave
10. Time and Wages Record
11. Right of Entry
12. Posting of Award
13. Parental Leave
14. Ordinary Hours of Work
15. Enterprise Hours of work
16. Additional Rates for Night Work
17. Shift Work
18. General Conditions
19. Meal Allowance
20. Meal Breaks
21. Contract of Employment
22. Annual Leave
23. Public Holidays
24. Superannuation
25. Dispute Settlement
26. Introduction of Change
27. Redundancy
28. Payment of Wages
29. Enterprise Agreements
30. Traineeship
31. Wages
32. Definitions
 - Appendix 1.—Parental Leave Entitlements
33. Supported Wages Employees
 - Appendix—Resolution of Disputes Requirements
 - Schedule of Respondents
 - Appendix—S.49B—Inspection Of Records Requirements

3.—SCOPE

This award shall apply to all employees employed by the respondents in the classifications described in Clause 31.—Wages hereof.

(1) In the manufacturing of cakes, sponges, biscuits and allied products.

(2) In the manufacturing, preparation packing or putting up of spices, condiments, coffee, chicory, cocoa, tea, jelly crystals, farinaceous foods, polishes, honey and other similar lines generally manufactured, packed, prepared or put up by manufacturing grocers, matchers, margarine, cereal foods, macaroni

or similar products, nuts, nut foods, nut products, potato chips, popcorn, polishing materials and such other products as are handled by the respondents.

(3) In the packing, bottling, blending, preserving, canning, refilling, pulping, brewing, mixing, grading, weighing, stamping, branding, washing, stacking, making and/or;—processing vegetables, jam, sauces, vinegars, pickles, chutneys, condiments and such other similar products as are handled by the respondent.

(4) In the preserving of fruit by pulping, mixing, refining, cooking, bottling and canning and the packing, branding, stacking of such bottled, canned and preserved fruits and such other similar products as are handled by the respondent.

(5) In the killing, dressing, preparation and/or processing by quick freeze or other method or preservation of fish (other than molluscs or crustacea), vegetables, poultry or any part thereof.

(6) In the packing of fruit but only where the work is done in connection with a process designed to preserve the fruit or improve its appearance.

(7) In the manufacture, packing and storage of ice cream, ice cream products, milk mix, frozen confectionery, ice cream cones and wafers.

(8) In the manufacture, packing and handling or dealing of confectionery in any process of manufacture from raw materials such as sugar, glucose, gelatine, cocoa beans, gum or licorice, chocolate, or similar material to the finished article, and includes the running by hand with any kind of funnel or bag, jubes, jellies, cream fondant, snowballs, or other articles which are run into stamped or moulded starch trays or other moulded receptacles and/or making lozenges and/or making up and striping high boiled cooked sugar with or without hard and soft centres, and/or operating or controlling a chocolate dipping or covering machine.

4.—AREA

This award shall apply throughout the State of Western Australia.

5.—TERM

This award shall apply for a period of 18 months on and from the 1st day of March 1991, unless otherwise prescribed within this Award.

6.—OBJECTS

The principal objects of this award are—

- (1) To provide means of sustaining high levels of productivity.
- (2) To encourage the maintenance of set levels of quality.
- (3) To encourage and provide means for the establishment of a harmonious relationship between employer and employees.
- (4) To encourage the prevention and settling of industrial disputes.
- (5) To provide means for establishing and maintaining fair terms of conditions of employment.
- (6) To provide means of operating under various market and industry conditions.

7.—ABSENCE THROUGH SICKNESS

(1) (a) An employee who is unable to attend or remain at his or her place of employment during ordinary hours of work by reason of personal ill health or injury shall be entitled to payment for such absence in accordance with the following provisions.

(b) Entitlement to payment for a full time employee shall accrue weekly at the rate of 1.461 hours per week, such that an employee's maximum annual sick leave entitlement shall be 76 hours. For part time employees the entitlement in hours to sick leave shall accrue at a rate per week calculated in the following manner—

$$\frac{\text{Hours per week}}{38} \times 1.461$$

(c) The rate of pay for an absence in accordance with this clause shall be the employee's ordinary wage that he/she would

have received had he/she not been on leave. For part time employees, payment shall only be made for rostered ordinary hours he/she would have worked had he/she not been on leave in accordance with this clause.

(d) If, in the first or successive years of service with the employer, an employee is absent on the ground of personal ill health or injury for a period longer than his/her entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his/her inability to attend for work, the nature of his/her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 2 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury that would satisfy a reasonable person. Provided that an employee shall not be required to produce a medical certificate or such other proof with respect to absences of two days or less unless after two such absences in any year of service the employer requests that the next and subsequent absences, if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he/she is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of seven consecutive days or more and he/she produces a certificate from a registered medical practitioner that he/she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he/she is unable to attend for work on the working day next following his/her annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he/she proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 16.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 22.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of clause 2 of the Long Service Leave provisions published in volume 59 of the Western Australian Industrial Gazette at pages 1 to 6, the paid sick leave standing to the credit of the employee at the date of

transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transmitter and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation Act nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) The provisions of this clause do not apply to casual employees.

(9) An employee shall not be entitled to claim payment for personal ill health or injury, nor will his/her sick leave entitlement be reduced if such ill health or injury occurs on his/her rostered day off.

8.—BEREAVEMENT LEAVE

(1) An employee shall, on the death of the spouse, de facto spouse, parent, step-parent, child or step-child of the employee or any other person who, immediately before that person's death, lived with the employee as a member of the employee's family, be entitled to paid bereavement leave up to 2 days.

(2) The right to such leave shall be dependent on compliance with the following conditions—

- (a) The employee shall furnish proof such as would satisfy a reasonable person as to the death that is the subject of the leave and/or the relationship of the employee to the deceased person should the employer so request.
- (b) The employee shall not be entitled to leave under this clause during a period of any other kind of leave.

(3) For the purpose of this clause the pay of an employee employed on shift work shall be deemed to include the allowance set out in Clause 17.—SHIFT WORK.

9.—LONG SERVICE LEAVE

The Long Service Leave provisions, set out in Volume 59 of the "Western Australian Industrial Gazette" at pages 1 to 6 inclusive, are hereby incorporated in and shall be deemed to be part of this award.

10.—TIME AND WAGES RECORD

(1) The employer shall keep, or cause to be kept, a record or records containing the following particulars—

- (a) Full name and last known residential address of each employee.
- (b) Employee's classification under which he/she is remunerated.
- (c) The starting and finishing times and the hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee. Provided that junior employees upon being engaged shall furnish the employer with a certificate containing the junior employee's name in full and date of birth.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The time and wages record shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office or other convenient place and the official may be allowed to take extracts therefrom.

11.—RIGHT OF ENTRY

(1) Accredited officials of the union shall be permitted to interview the employees on the business premises of the employer during non working times or meal breaks.

(2) In the case of a dispute between the union and an employer which is likely to lead to cessation of work or to an application to the Western Australian Industrial Relations Commission and which involves the inspection of employees or of machines in the process of production on which such employees are engaged, such union representatives shall have the right of inspection at any time during which the employees operating the machines concerned are working but this permission shall not be exercised, without the consent of the employer, more than once in any one pay period.

(3) Provided that the duly accredited official shall notify the employer beforehand of his/her intention to exercise his/her rights under this clause and the union official exercising his/her rights under this clause shall not interfere with or inconvenience the work duties of the employees.

12.—POSTING OF AWARD

The employer shall allow a copy of this award, if supplied by the union, to be posted in a place easily accessible to the employees.

CLAUSE 13.—PARENTAL LEAVE

(1) Subject to the terms of this clause employees are entitled to unpaid maternity, paternity and adoption leave and to work part time with the approval of the employer in connection with the birth or adoption of a child in accordance with the provisions of Appendix 1 to this Award.

(2) Definitions

For the purposes of Appendix 1, the following definitions shall apply—

- (a) "Employee" includes a part time employee but does not include an employee engaged upon casual or seasonal work.
- (b) "Spouse" includes a de facto or a former spouse.
- (c) "Continuous service" means service under an unbroken contract of employment and includes—
 - (i) Any period of leave taken in accordance with this clause;
 - (ii) any period of part time employment worked in accordance with this clause; or
 - (iii) any period of leave or absence authorised by the employer or by the award.

14.—ORDINARY HOURS OF WORK

(1) The ordinary hours of work shall be an average of 38 per week over any five days of the week worked over any one of the following cycles—

- (a) 38 hours within a work cycle not exceeding 7 consecutive work days; or
- (b) 152 hours within a work cycle not exceeding 28 consecutive days; or
- (c) 1,976 hours within a work cycle of one calendar year provided that for each day in excess of 364 days in a calendar year, 7 hours and 36 minutes shall be added to 1,976 hours.

(2) Nothing in this clause shall be construed to prevent an agreement to operate any method of working a 38 hour week as prescribed in subclause (1) of this clause provided that agreement is reached in accordance with the procedures prescribed by Clause 29.—Enterprise Agreements.

(3) In the absence of any agreement reached in accordance with subclause (2) of this clause the conditions of this clause shall apply.

(4) (a) The ordinary hours of work shall be worked on Monday to Friday inclusive and subject to Clause 17.—Shift Work, between the hours of 6.00am and 6.00pm.

(b) Notwithstanding the provision of subclause (4)(a) of this clause, the ordinary starting time for poultry processing plants may be 5.00am.

(c) In order to cover peak seasonal demands or for any other circumstances the starting or finishing times other than those prescribed in paragraph (a) of this subclause may, in any particular case be fixed by agreement between the employer and the union.

(d) Notwithstanding paragraphs (a) and (b) of this subclause the ordinary hours of work of employees engaged on duties as required preliminary to normal production shall be worked between such hours as so required.

(e) The starting and finishing times in any establishment shall only be altered by the employer giving seven days notice to the employees of such alteration, except where otherwise agreed between the employer and the union.

(5) (a) Where a Rostered Day Off system operates in the employer's establishment, the employer may substitute the day an employee is to take off for another day in the case of a

breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

(b) An employer and employee may by agreement substitute the day the employee is to take off for another day.

(c) An employer may with the agreement of the majority of the employees concerned, institute a banking system of Rostered Days Off in order to cover peak seasonal demand.

Employees would therefore work on what would normally have been their rostered day off and accrue an entitlement to bank a Rostered Day Off to be taken at a mutually convenient time for both the employee and the employer; provided that no less than 14 days notice is given before taking the banked Rostered Day(s) Off.

(d) No payments of penalty payment shall be made to employees working under this substitute banked Rostered Day Off. However the employer will maintain a record of the number of Rostered Days banked and will apply the Average Pay System during the weeks when an employee elects to take a banked Rostered Day Off.

Employees terminating prior to taking any banked Rostered Day(s) Off shall receive the following—

$$\frac{\text{Average Weekly Pay}}{5} \times \text{Number of Banked Substitute Days}$$

(e) Where a rostered day off falls on a Public Holiday as prescribed in Clause 22.—Public Holidays, the next working day shall be taken in lieu of the Rostered Day Off unless an alternative day in that four weekly cycle is agreed in writing between the employer and the employee.

(6) (a) All time worked before the usual starting time or after the usual finishing time, or beyond eight hours in any one day, shall be deemed overtime and be paid for at the rate of time and a half for the first two hours per day and double time thereafter.

(b) All work performed after twelve noon Saturday or on Sunday shall be paid for at the rate of double time.

(c) Work done on any day prescribed as a holiday by this award shall be paid for at the rate of double time and a half.

(d) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged so that employees have at least eight consecutive hours off duty between the work of successive days.

(e) An employee (other than a casual employee) who works so much overtime between the termination of his/her ordinary work on one day and the commencement of work on the next day that he/she has not had at least eight consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he/she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(f) If, on the instructions of the employer, such an employee resumes or continues work without having had such eight consecutive hours off duty, he/she shall be paid at double rates until he/she is released from duty for such period and he/she shall be then entitled to be absent until he/she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

15.—ENTERPRISE HOURS OF WORK

Notwithstanding the provisions of Clause 14.—Ordinary Hours of Work, where an agreement is reached under Clause 29.—Enterprise Agreements to operate any method of working a 38 hour week, the hours of work agreed upon under that clause shall contain the following minimum conditions.

(1) The ordinary hours of work shall be an average of 38 per week worked over any one of the cycles prescribed in Clause 14.—Ordinary Hours of Work.

(2) Where in accordance with this clause employees work ordinary hours on a Saturday, all such hours worked shall be paid for at the rate of time and a quarter.

(3) Where in accordance with this clause employees work ordinary hours on a Sunday, all such hours worked shall be paid for at the rate of time and one half.

(4) All hours in excess of 38 hours in any one week are to be deemed overtime. The first ten hours of such overtime are to

be paid at time and one half and thereafter at double time except where subclause (5) of this clause applies.

(5) All hours in excess of twelve hours in any one day are to be paid at double time. Overtime worked in excess of two hours in any one day is also to be paid at double time. These double time entitlements will override any time and a half entitlements as a result of working in excess of 38 hours in one week.

(6) All other provisions of the award shall apply except to those conditions as prescribed in an enterprise agreement.

16.—ADDITIONAL RATES FOR NIGHT WORK

Where an employee (not being a shift employee) works any ordinary hours between 6.00pm and 6.00am before and after an enterprise's usual operating hours he/she shall be paid 20% in addition to his/her ordinary rate for all such hours worked.

17.—SHIFT WORK

(1) For the purpose of this award shift work shall refer to a system whereby one shift of employees is replaced by another.

(2) An employer may, if he/she so desires, work his/her establishment on shifts and before doing so he/she shall give notice of his/her intention to the union and of the intended starting and finishing times of the respective staff.

(3) A shift employee shall, in addition to his/her ordinary rate of wage, be paid an additional 15% for all ordinary hours worked on afternoon or night shift.

(4) Where any particular process is carried out on shifts other than day shift and less than five consecutive afternoon or five consecutive night shifts are worked on that process, then the employees employed on such afternoon or night shifts shall be paid at overtime rates.

18.—GENERAL CONDITIONS

(1) (a) An employee engaged on duties carrying a higher rate than his/her ordinary classification shall be paid the higher rate for the time he/she is so engaged but if he/she is so engaged for more than half of one day or shift he/she shall be paid the higher rate for the whole day or shift.

(b) An employee's regular rate of wage shall not be reduced whilst he/she is temporarily employed on work classified with a lower minimum rate.

(2) Where the conditions of work are such that employees are unable to avoid their clothing becoming excessively wet or dirty, or work performed in a freezing chamber they shall be supplied with suitable protective clothing or material. Such protective clothing or material shall remain the property of the employer and shall be returned when required, in good order and condition, fair wear and tear excepted, or paid for at replacement cost.

Such clothing shall be deemed to include footwear, gloves, headgear and any other protective equipment used for the protection of employees in their job function.

(3) Where an employee is required by the employer to wear a special uniform, such uniform shall be provided by the employer at his/her expense. Such uniform shall remain the property of the employer and shall be returned when required in good order and condition, fair wear and tear excepted, or paid for at replacement cost.

(4) Adequate first aid equipment shall be provided in all establishments.

(5) Where and when practicable, suitable seating accommodation shall be provided for employees unless it is physically impossible to carry out the work required in a sitting position.

(6) Where an employee, except for a shift employee, is detained at work until it is too late to travel by the last ordinary bus, train or other regular public conveyance to his/her usual place of residence, the employer shall provide proper conveyance to the employee's usual place of residence, free of charge. This clause shall not apply to any employee who usually has his/her own means of conveyance.

(7) Nothing herein contained shall entitle an employer to reduce the wage of any employee who at the date this award was being paid a higher rate of wage than the minimum prescribed for his or her own class of work.

(8) Liberty is reserved to any party to apply to vary the provisions of this clause provided that such application shall not

be made any earlier than 6 months from the 1st day of March 1991.

19.—MEAL ALLOWANCE

Where an employee required to work overtime for more than two hours, without being notified on the previous day or earlier that he/she will be so required to work, shall be supplied with a meal by the employer or paid \$5.40 for a meal. If owing to the amount of overtime a second or subsequent meal is required the employee shall be supplied with each such meal by the employer or be paid \$3.70 for each meal so required.

If an employee in consequence of receiving such notice has provided himself/herself with a meal or meals and is not required to work overtime or is required to work less overtime than notified, he/she shall be paid the amounts prescribed above in respect of the meals not then required.

20.—MEAL BREAKS

(1) An employee shall not be compelled to work for more than five hours without a meal interval except where an alternative arrangement is entered into as a result of discussions between the employer and an employee and the majority of employees in the plant or work section concerned.

(2) The meal break shall not be paid.

(3) The time of taking a scheduled break may be postponed for one hour by an employer if it is necessary to do so in order to meet a requirement for continuity of operations.

21.—CONTRACT OF EMPLOYMENT

(1) An employee will be engaged as a full time, part time or casual employee.

(2) Termination of Full Time and Part Time Employment

(a) Should an Employer wish to terminate a full time or part time employee, the following period of notice shall be provided—

<u>Period of Continuous Service</u>	<u>Period of Notice</u>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

(b) Employees over 45 years of age with 2 or more years continuous service at the time of termination, shall receive an additional week's notice.

(c) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.

(d) Payment in lieu of notice shall be calculated using the employees weekly ordinary time earnings.

(e) The period of notice in this clause shall not apply in the case of dismissal for serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.

(f) Notice of termination by employee

1 week's notice shall be necessary for an employee to terminate his or her engagement or the forfeiture of 1 week's pay by the employee to the employer in lieu of notice.

(3) (a) "Part-time employee" shall mean any employee who works regularly from week to week and his/her total ordinary hours of work are less than 38 hours in any week.

(b) A part-time employee shall be paid at the rate of one thirty eighth of the ordinary rate of wage prescribed by this award for the class of work performed for each ordinary hour worked.

(c) Payment of holidays, annual leave and absence through sickness for part-time employees pursuant to Clause 22.—Annual Leave, Clause 23.—Holidays and Clause 7.—Absence Through Sickness, of this award shall be in the proportion that the hours regularly worked each week bears to 38 hours.

For the purpose of calculating the payment for annual leave hereunder the hours regularly worked each week shall be the

weekly arithmetical average of the total ordinary hours worked during the qualifying period for such annual leave.

(4) Probation

Notwithstanding subclause (2) above, a full time or part time employee engaged under the terms of this Award may be engaged under probation for an agreed period not exceeding three months during which time either party may terminate the contract without notice.

(5) (a) "Casual employee" shall mean an employee engaged and paid as such.

All casual employees shall be paid 1/38th of the rate of their classification for each hour worked, plus 20 per cent.

(b) The contract of service for a casual employee shall be by the hour and be terminable at any moment by one hours' notice on either side or, in the event of such notice not being given, by the payment of one hours' pay by the employer or the forfeiture of one hours' pay by the employee.

(6) The employer shall be entitled to deduct payment for any day or portion of a day upon which the employee cannot be usefully employed because of a strike by the union or unions affiliated with it, or by any other association or union, or through the breakdown of the employer's machinery or any stoppage of work, by any cause, which the employer cannot reasonably prevent.

(7) (a) An employer may suspend an employee from duty for refusal or neglect of duty, malingering, inefficiency or any other form of misconduct by the employee and subject to the provisions of subclause (5) of this clause, may withhold payment of wages for the period for which the employee is so suspended.

(b) Before the implementation of the provisions of this subclause, the employer shall provide to the employee a written warning showing the nature of the problem at hand, the procedure the employee must follow to resolve the matter and shall allow a reasonable period of time for the employee to rectify the situation.

22.—ANNUAL LEAVE

(1) 20 days annual leave without deduction of pay shall be allowed annually to all employees (other than casual employees).

(2) Leave shall be taken in not more than two periods and at a time which is mutually convenient to the employer and the employee.

(3) When a person proceeds on annual leave he/she shall be paid his/her ordinary rate plus 17.5% unless he/she is a shift employee and would have received more for the leave in which case he/she shall be paid what he/she would have been entitled to had he/she worked his/her ordinary rostered shift.

The loadings prescribed by this subclause shall not apply to proportionate leave on termination.

(4) If after one month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid 2.923 hours' pay at his/her ordinary rate of wage in respect of each completed week of continuous service.

(5) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

23.—PUBLIC HOLIDAYS

All employees (other than casuals) shall be entitled to those public holidays as gazetted; provided that another day may be taken as a holiday by agreement between the employer and the employee in lieu of any of the gazetted public holidays.

24.—SUPERANNUATION

(1) Application to Superannuation Scheme

(a) Subject to the provisions of subclause (3)—Exemptions hereof each employer bound by the provisions of this award shall execute an agreement to become a contributor to an Approved Occupational Superannuation Scheme.

(b) For the purpose of this award an Approved Occupational Superannuation Scheme means any scheme which complies with the provisions of the Occupational Superannuation Standards Act, 1987.

(c) The employer shall provide such facilities as are appropriate to ensure that all employees are adequately informed of the provisions of the Superannuation funds available.

(2) Contributions

(a) Upon acceptance to the scheme by the Trustee of the Preferred Scheme or an Approved Scheme, an employer shall contribute to the scheme in respect of all eligible employees an amount equal to 3% of each employees' ordinary time earnings.

(b) An employer shall not be required to contribute during any periods of unpaid leave or unauthorised absences. Further an employer shall not be required to make additional contributions in respect of annual leave paid out on termination or any other payments on termination.

(c) Contributions shall be made after a qualifying period of three months for each calendar month unless the employee fails to return a completed application to join the Fund and the employer has complied with the following—

(i) The employer shall provide the employee with an application to join the Fund and documentation explaining the Fund within one week of employment commencing.

(ii) If the employee fails to return to the employer a completed application to join the Fund within two weeks of receipt, the employer shall send to the employee a letter setting out relevant superannuation information, the letter of denial set out in subclause (3) of this clause and an application to join the fund.

(iii) Where the employee completes and returns the letter of denial, no contribution need be made on that employee's behalf.

(iv) Where the employee completes and returns neither the application to join the Fund nor the letter of denial within one week of postage, the employer shall advise the Union in writing of the employee's failure to return the completed form.

(v) From two weeks following the employer's advice pursuant to paragraph (iv) should the employee not have returned the completed form the employer shall be under no obligation to make superannuation payments on behalf of that employee.

(3) The letter of denial shall be in the following form—

"To (employer)

I have received an application for membership of the non-contributory Superannuation Fund and understand—

(1) that should I sign such form you will make contributions on my behalf; and

(2) that I am not required to make contributions of my own; and

(3) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the Fund or have contributions made on my behalf.

.....
(Signature)

.....
(Name)

.....
(Address)

.....
(Classification)

.....
(Date)"

(4) Exemptions

- (a) Employers of employees who are covered by an approved Superannuation Award, Order or Agreement made pursuant to the Industrial Relations Act, 1979 shall be exempted from the provisions of this clause.
- (b) Employers contributing an amount equal to or greater than that required by this clause to an Approved Occupational Superannuation Scheme prior to this award are not required to make additional contributions to comply with this clause.

25.—DISPUTE SETTLEMENT

(1) Depending on the issues involved, the size and function of the plant or enterprise and the union membership of the employees concerned, a procedure involving up to four stages of discussion shall apply. These are—

- (a) discussions between the employee/s concerned (and shop steward if requested) and the immediate supervisors;
- (b) discussions involving the employee/s concerned, the shop steward and the employer representative;
- (c) discussions involving representatives from the state branch of the union(s) concerned and the employer representatives;
- (d) discussions involving senior union officials (state secretary) and the senior management representative(s).

(2) Sensible time limits shall be allowed for the completion of the various stages of the discussions.

(3) Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties shall jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

(4) In order to allow for the peaceful resolution of grievances the parties shall be committed to avoid stoppages of work, lockouts or any other bans or limitation on the performance of work while the procedures of negotiation and conciliation are being followed.

(5) The employer shall ensure that all practices applied during the operation of the procedure are in accordance with safe working practices and consistent with established custom and practices at the workplace.

26.—INTRODUCTION OF CHANGE

(1) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and their union.

(2) The employer shall discuss with the employees affected and their union, the introduction of the changes referred to in subclause (1) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and their union in relation to the changes.

(3) For the purposes of such discussion, the employer shall provide in writing to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

27.—REDUNDANCY

(1) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their union.

(2) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in subclause (1) hereof the employee shall be

entitled to the same period of notice of transfer as he or she would have been entitled to if his or her employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

(3) Severance Pay

In addition to the period of notice prescribed for ordinary termination in Clause 20.—Contract of Service, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in subclause (1) hereof shall be entitled to the following minimum amount of severance pay in respect of a continuous period of service.

<u>Period of continuous service</u>	<u>Severance Pay</u> <u>Weeks</u>
1 year or less	NIL
1 year and up to the completion of 2 years	4
2 years and up to the completion of 3 years	6
3 years and up to the completion of 4 years	7
4 years and over	8

(4) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (1) hereof may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(5) Alternative Employment

An employer, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

(6) Time Off During Notice Period

- (a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

(7) Subject to further order of the Western Australian Industrial Relations Commission where an employee who is terminated receives a benefit from a superannuation scheme, he or she shall only receive under subclause (3) hereof the difference between the severance pay specified in that subclause and the amount of the superannuation benefit he or she receives which is attributable to employer contributions only.

If this superannuation benefit is greater than the amount due under subclause (3) hereof then he or she shall receive no payment under that clause.

(8) Employees With Less Than One Year's Service

This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

(9) Employees Exempted

This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specific task or tasks.

(10) Incapacity to Pay

An employer, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

28.—PAYMENT OF WAGES

(1) Wages shall be paid weekly or fortnightly on any day of the week other than a Saturday or Sunday and not more than 2 days pay shall be kept in hand. Provided that the timing of payment shall be subject to agreement between the employer and the majority of employees concerned.

(2) The method of payment of wages may be by cash or direct transfer of funds into a bank or financial institution nominated by the employee.

If an employer uses direct transfer as the method of payment, employees are obliged to comply with this method provided that they are not disadvantaged by way of the times of availability of pay.

(3) An employee who lawfully leaves his/her employment or is dismissed for reasons other than misconduct shall be paid all monies due to him/her at the termination of his/her service with the employer, before leaving the employer's premises or alternatively (except in the case of casual employees) a cheque for the amount due may be forwarded to the employee's last known address within 48 hours of such termination.

29.—ENTERPRISE AGREEMENTS

(1) (a) Where an agreement is reached between the employer, the employees and the union concerning the working arrangements to be followed within the respondent employer's factory, workshop, department or section thereof the provisions of this award may be varied in any manner as agreed.

Provided that the term "working arrangement" shall mean all aspects of the employer's establishment that are subject to conditions covered by this award.

(b) Where the majority of employees support the work changes proposed, then the union will not withhold agreement to the alternative working arrangements.

(2) The following procedures shall apply in the formation of any agreement negotiated under the term of this clause—

- (a) the union will be notified in writing of the proposed variations prior to any change taking place;
- (b) the proposed variations for each workplace or part thereof shall be explained to the employees concerned and written notification of proposals will be placed on the notice board at the worksite;
- (c) the employer and the affected employees will then consult with each other on the changes with a view to reaching agreement.

(3) Any agreement concluded pursuant to subclause (1) of this clause shall be submitted to the Western Australian Industrial Relations Commission for inclusion with this award as an Appendix to this award.

(4) Any dispute with regard to the implementation of agreements reached pursuant to this clause or matters to which the parties cannot reach agreement may be referred to the Western Australian Industrial Relations Commission for determination.

30.—TRAINEESHIPS

(1) Scope

- (a) Subject to paragraph (b) of this subclause shall apply to persons—
 - (i) who are undertaking a Traineeship (as defined); and
 - (ii) who are employed by an employer bound by this award; and
 - (iii) whose employment is covered by the Food Industry (Food Manufacturing or Processing) Award No. A 20 of 1990.
- (b) Notwithstanding the foregoing, this clause shall not apply to employees who were employed by an employer bound by this clause prior to the date of approval of a traineeship scheme relevant to the employer, except where agreed between the employer and the Union.

(2) Objective

- (a) The objective of this clause is to establish a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of Trainees, particularly young people, and the long term unemployed.
- (b) The system is neither designed nor intended for those who are already trained and job ready.
- (c) Existing employees shall not be displaced from employment by trainees.

(3) Supersession

The existing award provisions for the Australian Traineeship System (ATS) shall not apply to any employer bound by this award, except in relation to ATS trainees who commenced a traineeship with the employer before the employer was bound to this award.

(4) Definitions

"Approved Training" means training undertaken in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship Scheme approved by the relevant State Training Authority or NETTFORCE. The training will be accredited and lead to qualifications as set out in subclause 5(e).

"Relevant Award" means the Food Industry (Food Manufacturing or Processing) Award No. A 20 of 1990.

"Trainee" means an employee who is bound by a Traineeship Agreement made in accordance with this clause.

"Traineeship" means a system of training which has been approved by the appropriate State Training Authority, or which has been approved on an interim basis by the National Employment and Training Taskforce (NETTFORCE), until final approval is granted by the relevant State Training Authority.

"Traineeship Agreement" means an agreement made subject to the terms of this award between an Employer and the Trainee for a Traineeship and which is registered with the appropriate State Training Authority, NETTFORCE, or under the provisions of the appropriate State legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

"Traineeship Scheme" means an approved Traineeship applicable to a group or class of employees or to an industry or sector of an industry or an enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the Union upon the terms of the proposed Traineeship Scheme and the Traineeship have occurred. An application for approval of a Traineeship Scheme shall identify the Union and demonstrate to the satisfaction of the approving authority that the abovementioned consultation and negotiation have occurred.

"Parties to a Traineeship Scheme" means the employer organisation and/or the employer and the union involved in the consultation and negotiation required for the approval of a Traineeship Scheme.

References in this award to "the relevant State Training Authority or NETTFORCE" shall be taken to be a reference to NETTFORCE in respect of a Traineeship that is the subject of an interim approval but not a final approval by the relevant State Training Authority. NETTFORCE powers and functions stipulated in this award may be circumscribed and/or delegated by the terms of an agreement between NETTFORCE and a relevant State Training Authority. Reference to NETTFORCE and a relevant state training authority. Reference to NETTFORCE within this clause will have no effect during the currency of the W.A. State Training Authority/NETTFORCE Memorandum of Agreement.

"Appropriate State Legislation" means the State Employment and Skills Development Authority Act 1990.

(5) Training Conditions

- (a) The Trainee shall attend an approved training course or training program prescribed in the Traineeship Agreement or as notified to the trainee by the appropriate State Training Authority in accredited and relevant traineeship schemes; or NETTFORCE if the traineeship scheme remains subject to interim approval.
- (b) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the employer and the trainee and lodged for registration with the relevant State Training Authority or NETTFORCE, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the relevant State Training Authority or NETTFORCE. The employer shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.
- (c) The employer shall provide a level of supervision in accordance with the Traineeship Agreement during the traineeship period.
- (d) The employer agrees that the overall training program will be monitored by officers of the appropriate State Training Authority or NETTFORCE and training records or work books may be utilised as part of this monitoring process.
- (e) Training shall be directed at—
- (i) The achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (e.g. literacy, numeracy, problem solving, teamwork, using technology), and as are proposed to be included in the AVC Level 1 qualification. This could be achieved through foundation competencies which are part of endorsed competencies for an industry or enterprise, and/or
 - (ii) The achievement of competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies), as are proposed to be included in the AVC Level 2 qualification or above.

(6) Employment Conditions

- (a) A Trainee shall be engaged as a full-time employee for a maximum of one year's duration provided that a Trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the relevant State Training Authority or NETTFORCE the parties to a Traineeship Agreement may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.
- (b) (i) An employer shall not terminate the employment of a Trainee without firstly having provided written notice of termination to the Trainee concerned in accordance with the Traineeship Agreement and to the relevant State Training Authority or NETTFORCE. The written notice to be provided to the relevant State Training Authority or NETTFORCE shall be provided within 5 working days of termination.
- (ii) An employer who chooses not to continue the employment of a trainee upon the completion of the traineeship shall notify, in writing, the relevant State Training Authority or NETTFORCE of its decision.
- (c) The Trainee is permitted to be absent from work without loss of continuity of employment and/or wages

to attend the training in accordance with the Traineeship Agreement.

- (d) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of any relevant Award or any other legislative entitlements.
- (e) (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training program is successfully completed.
- (ii) No Trainee shall work overtime or shiftwork on their own unless consistent with the provisions of this relevant award.
- (iii) No Trainee shall work shiftwork unless the parties to a Traineeship Scheme agree that such shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork Trainees.
- (iv) The Trainee wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the relevant award, unless otherwise agreed by the parties to a Traineeship Scheme, or unless the relevant award makes specific provision for a Trainee to be paid at a higher rate, in which case the higher rate shall apply.
- (f) All other terms and conditions of the relevant award that are applicable to the Trainee or would be applicable to the Trainee but for this Clause shall apply unless specifically varied by this Clause.
- (g) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in full time employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payments payable pursuant to termination, change and redundancy provisions or provisions similar thereto.

(7) Wages

- (a) (i) The minimum rates of wages payable weekly to trainees are as provided in subparagraph (iv) of this subclause.
- (ii) These wage rates will only apply to Trainees while they are undertaking an approved traineeship which includes approved training as defined in this Clause.
- (iii) The wage rates prescribed by this clause do not apply to completed trade level training which is covered by the Apprenticeship system.
- (iv) Skill Level B—
Where the accredited training course and work performed are for the purposes of generating skills which have been defined for work at Skill Level B.

HIGHEST YEAR OF SCHOOLING COMPLETED

School Leaver	Year 10 and below	Year 11	Year 12
	\$	\$	\$
	152.00	183.00	213.00
Plus 1 year out of school	183.00	213.00	245.00
Plus 2 years	213.00	245.00	287.00
Plus 3 years	245.00	287.00	327.00
Plus 4 years	287.00	327.00	
Plus 5 years	327.00		

Figures in brackets indicate the average proportion of time spent in approved training to which the associated wage rate is applicable. Where not specifically indicated, the average proportion of time spent in structured training which has been taken into account in setting the rate is 20%.

- (b) The skill level of approved Traineeships in the food industries has been agreed to be Skill Level B.
- (c) For the purposes of this provisions, "out of school" shall refer only to periods out of school beyond Year 10, (or below) and shall be deemed to—
- Include any period of schooling beyond Year 10 (or below) which was not part of nor contributed to a completed year of schooling;
 - Include any period during which a Trainee repeats in whole or part a year of schooling beyond Year 10 (or below); and
 - Not include any period during a calendar year in which a year of schooling is completed.
 - Have effect on an anniversary date being January 1 in each year.
- (d) At the conclusion of the Traineeship, this clause ceases to apply to the employment of the Trainee and the award shall apply to the former trainee.

31.—WAGES

The following shall be the minimum weekly rate of wage payable to employees covered by this award from the first pay period commencing on or after 29 November 1996.

	Award Rate Per Week \$
(1) Section One to Six as Defined—	
Level 1 (78%)	349.40
Level 1A (80%)	357.80
Level 2 (82%)	366.10
Level 3 (87.4%)	388.60
Level 4 (92.4%)	409.50
Level 5 (100%)	441.20

The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

(2) Junior Employees—

(Percentage of adult rate of Level 1)	%
Under 16 years of age	50
16 to 17 years of age	60
17 to 18 years of age	70
18 to 19 years of age	80
19 to 20 years of age	90
20 to 21 years of age	100

(3) Leading Hands:	Per Week Extra \$
A Leading Hand in charge of—	
(a) Less than three other employees	8.90
(b) Not less than three and not more than ten other employees	17.70
(c) More than ten other employees	25.90

32.—DEFINITIONS

SECTION ONE—POULTRY PROCESSING

1. LEVEL 1

Employees who are recruited into the Company at this level perform simple routine duties, work under direct supervision and receive detailed instruction. Level 1 employees exercise

minimum judgement and are responsible for the quality of their own work within the scope of this level.

1:1 Typical Tasks

Indicative of the tasks an employee at this level may perform are the following—

1:1.1 Undertaking induction training.

1:1.1 Performing a range of general labouring and cleaning duties.

1:2 Promotional Criteria

Employees remain at this level until such time as they have satisfactorily completed an induction program which enables them to meet the competency requirements of Level 2, a position becomes available and they are selected to fill that vacancy.

An induction program covers—

1:2.1 Basic occupational health and safety.

1:2.2 First aid.

1:2.3 Conditions of employment.

1:2.4 Company policies/objectives.

1:2.5 Plant layout and material location.

1:2.6 Workplace training to meet the requirements of being able to competently perform work within the scope of Level 2.

2. LEVEL 2

Employees at this level perform utility (general hand) functions and in so doing, perform work above and beyond the skills of an employee at Level 1 and to the level of their training—

- Work under direct supervision either individually or in a team environment.
- Understand and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations and faults.
- Understand and utilises basic statistical process control procedures.
- Exercise minimal decision making.
- Exercise discretion within their level of skills and training.

2:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

2:1.1 Undertaking training to enable entry into Level 3.

2:1.2 May be required to perform any of the duties of a lower level.

2:1.3 Machine killing of poultry.

2:1.4 Machine packing of poultry.

2:1.5 Machine cutting of poultry.

2:1.6 Machine eviscerating of poultry.

2:1.7 Maintain tally of records.

2:1.8 Hanging of live poultry on chain conveyor.

2:1.9 Identify machine faults (basic).

2:1.10 Manual packing of product.

2:1.11 General process line work.

2:1.12 Uses hand trolleys and pallet trucks.

2:1.13 Weighing of product.

2:2 Promotional Criteria

Employees may be promoted to Level 3 when—

2:2.1 They can competently carry out all tasks of a Level 2 employee.

2:2.2 A position becomes available and they are selected to fill that vacancy.

3. LEVEL 3

Employees at this level have completed a Production Certificate or equivalent training to enable the employees to perform work within the scope of this level.

Employees at this level—

- Are responsible for the quality of their own work subject to routine supervision.

- Work under routine supervision either individually or in a team environment.
- Exercise discretion within their level of skills and training.

3:1 Typical Skills

Indicative of the tasks which an employee at this level may perform are the following—

- 3:1.1 Undertaking training to enable entry into Level 4.
- 3:1.2 May be required to perform any of the duties of a lower level.
- 3:1.3 Receiving, despatching, distributing, sorting, checking, packaging (other than repetitive packing), documenting and recording of goods, materials and components.
- 3:1.4 Basic inventory control in the context of a production process.
- 3:1.5 Exercising keyboard skills at basic level.
- 3:1.6 Operation of mobile equipment including forklifts, overhead cranes and winch operation.
- 3:1.7 Carrying out different measurements.
- 3:1.8 Assists in the provision of on the job training in conjunction with supervisors/trainers.
- 3:1.9 Undertake minor adjustments to machinery.
- 3:1.10 Conduct some basic testing.
- 3:1.11 Identify product specification problems.
- 3:1.12 Record test results.
- 3:1.13 Blend ingredients, using a predetermined recipe.
- 3:1.14 Manual cutting of poultry on power saw.
- 3:1.15 Chicken filleting.
- 3:1.16 Drive forklift (to license standards).
- 3:1.17 Manual killing of poultry.

3:2 Promotional Criteria

Employees may be promoted to Level 4 when—

- 3:2.1 They can competently carry out all tasks of a Level 3 employee.
- 3:2.2 A position becomes available and they are selected to fill that vacancy.

4. LEVEL 4

Employees at this level have completed a Production Certificate or equivalent training so as to enable employees to perform work within the scope of this level.

Employees at this level—

- Work from instructions and procedures.
- Assist in the provision of on the job training.
- Co-ordinate work in a team environment or work individually under general supervision.
- Write and read reports.

4:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 4:1.1 Undertaking training to enable entry into Level 5.
- 4:1.2 May be required to perform any of the duties of a lower level.
- 4:1.3 Carrying out inventory and store control.
- 4:1.4 Using tools and equipment within the scope of basic non-trade maintenance.
- 4:1.5 Exercising intermediate keyboard skills.
- 4:1.6 Supervising the work of their employees.
- 4:1.7 Allocate tasks to other employees.
- 4:1.8 Implement production requirements.
- 4:1.9 Oversee performance of other employees.
- 4:1.10 Conduct routine tests.
- 4:1.11 Routine decisions regarding test results.
- 4:1.12 Refer exceptional results to senior staff member.

4:2 Promotional Criteria

Employees may be promoted to Level 5 when—

- 4:2.1 They can competently carry out all tasks of a Level 5 employee.
- 4:2.2 A position becomes available and they are selected to fill that vacancy.

5. LEVEL 5

Employees at this level have completed approved courses in the development of supervisory skills. For example; TAFE Supervision Certificate or equivalent. Employees at this level may hold a Trade Certificate appropriate within the scope of their position and demonstrate their ability to exercise of that trade.

Employees at this level have completed appropriate Production Certificate or equivalent.

Employees at this level—

- Understands and applies quality control techniques.
- Exercises good interpersonal communications skills.
- Exercises discretion within the scope of the grade.
- Exercises keyboard skills at a level higher than Level 4.
- Would be expected to organise and control the work output of a section.
- Is able to inspect products and/or materials for conformity with established operations standards.

5:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 5:1.1 May be required to perform any of the duties of a lower level.
- 5:1.2 Maintaining quality standards including the approval of first-off samples.
- 5:1.3 Basic production scheduling and materials handling within the scope of the process or directly related functions within new materials/finished goods location in conjunction with technicians.
- 5:1.4 Exercising advanced keyboard skills.
- 5:1.5 Assists in the provisions of on the job training in conjunction with trainer.

SECTION TWO—GROCERY, MATCH, BISCUIT AND CAKE MANUFACTURING

1. LEVEL 1

Employees who are recruited into the Company at this level perform simple routine duties, work under direct supervision and receive detailed instruction. Level 1 employees exercise minimal judgement and are responsible for the quality of their own work within the scope of this level.

1:1 Typical Tasks

Indicative of the tasks an employee at this level may perform are the following—

- 1:1.1 Undertaking induction training.
- 1:1.2 Performing a range of general labouring and cleaning duties.

1:2 Promotional Criteria

Employees remain at this level until such time as they have satisfactorily completed an induction programme which enables them to meet the competency requirements of Level 1A, a vacancy exists and they are selected to fulfil that vacancy.

An induction program covers—

- 1:2.1 Basic occupational health and safety.
- 1:2.2 First aid.
- 1:2.3 Conditions of employment.
- 1:2.4 Company policies/objectives.
- 1:2.5 Plant layout and material location.
- 1:2.6 Workplace training to meet the requirements of being able to competently perform work within the cope of Level 1A.

1A. LEVEL 1A

Employees at this level perform a range of tasks and in so doing, work above and beyond the skills of an employee at Level 1 and to the level of their training—

- Work under direct supervision either individually or in a team environment.
- Understand and undertake basic quality control.

1A:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 1A:1.1 General cleaning duties.
- 1A:1.2 Manual packing of products.
- 1A:1.3 Using hand trolleys and pallet packs.

1A:2 Promotional Criteria

Employees may be promoted to Level 2 when—

- 1A:2.1 They can competently perform all tasks of a Level 1A employee.
- 1A:2.2 A position becomes available and they are selected to fill that vacancy.

2. LEVEL 2

Employees at this level perform utility (general hand) functions and in so doing, perform work above and beyond the skills of an employee at Level 1 and to the level of their training—

- Work under direct supervision either individually or in a team environment.
- Understand and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations and faults.
- Exercise minimal decision making.
- Exercise discretion within their level of skills and training.

2:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 2:1.1 Undertaking training to enable entry into Level 3.
- 2:1.2 May be required to perform any of the duties of a lower level.
- 2:1.3 Stack, prepare for storage raw and finished products and packaging material.
- 2:1.4 Maintaining simple production records.
- 2:1.5 Identify machine faults (basic).
- 2:1.6 Stocktaking of raw and packaging material.
- 2:1.7 Uses hand trolleys and pallet trucks.
- 2:1.8 Machine packing of product.
- 2:1.9 Basic ingredient blending.

2:2 Promotional Criteria

Employees may be promoted to Level 3 when—

- 2:2.1 They can competently carry out all tasks of a Level 2 employee.
- 2:2.2 A position becomes available and they are selected to fill the vacancy.

3. LEVEL 3

Employees at this level have completed a Production Certificate or equivalent training to enable the employees to perform work within the scope of this level.

Employees at this level—

- Are responsible for the quality of their own work subject to routine supervision.
- Work under routine supervision either individually or in a team environment.
- Exercise discretion within their level of skills and training.
- May co-ordinate small work teams of Level 2 employees.

3:1 Typical Skills

Indicative of the tasks which an employee at this level may perform are the following—

- 3:1.1 Undertaking training to enable entry into Level 4.
- 3:1.2 May be required to perform any of the duties of a lower level.
- 3:1.3 Receiving, despatching, distributing, sorting, checking, packaging (other than repetitive packing), order assembly, documenting and recording of goods, materials and components.
- 3:1.4 Basic inventory control in the context of a production process.
- 3:1.5 Exercising keyboard skills at basic level.
- 3:1.6 Operation of mobile equipment including forklifts, overhead cranes and winch operation.
- 3:1.7 Carrying out different measurements.
- 3:1.8 Undertake minor adjustments to machinery.
- 3:1.9 Conduct some basic testing.
- 3:1.10 Identify product specification problems.
- 3:1.11 Record test results.
- 3:1.12 Blend ingredients, using a predetermined recipe.
- 3:1.13 Operate a sifter, screens and basic milling equipment.
- 3:1.14 Stock recording and inventory control.
- 3:1.15 Sample product for quality control and laboratory testing.
- 3:1.16 Operating automatic, semi-automatic or single purpose machinery.

3:2 Promotional Criteria

Employees may be promoted to Level 4 when—

- 3:2.1 They can competently carry out all tasks of a Level 3 employee.
- 3:2.2 A position becomes available and they are selected to fill the vacancy.

4. LEVEL 4

Employees at this level have completed a Production Certificate or equivalent training so as to enable employees to perform work within the scope of this level.

Employees at this level—

- Work from instructions and procedures.
- Assist in the provision of on the job training.
- Co-ordinate work in a team environment or work individually under general supervision.
- Write and read reports.

4:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 4:1.1 Undertaking training to enable entry into Level 5.
- 4:1.2 May be required to perform any of the duties of a lower level.
- 4:1.3 Inventory and store control including operations of all appropriate materials handling equipment, VDU and keyboard operation at a level higher than that of level 3.
- 4:1.4 Using tools and equipment within the scope of basic non-trade maintenance.
- 4:1.5 Exercising intermediate keyboard skills.
- 4:1.6 Supervising the work of their employees.
- 4:1.7 Allocate tasks to other employees.
- 4:1.8 Implement production requirements.
- 4:1.9 Conduct routine tests.
- 4:1.10 Routine decisions regarding test results.
- 4:1.11 Refer exceptional results to senior staff member.
- 4:1.12 Assists in the provision of on the job training in conjunction with trainers and tradespersons.

4:2 Promotional Criteria

Employees may be promoted to Level 5 when—

- 4:2.1 They can competently carry out all tasks of a Level 5 employee.
- 4:2.2 A position becomes available and they are selected to fill that vacancy.

5. LEVEL 5

Employees at this level have completed approved courses in the development of supervisory skills. For example; TAFE Supervision Certificate or equivalent.

Employees at this level may hold a Trade Certificate appropriate within the scope of their position and demonstrate their ability to exercise of that trade.

Employees at this level have completed appropriate Production Certificate or equivalent.

Employees at this level—

- Understands and applies quality control techniques.
- Exercises good interpersonal communications skills.
- Exercises discretion within the scope of the grade.
- Exercises keyboard skills at a level higher than Level 4.
- Would be expected to organise and control the work output of a section.
- Is able to inspect products and/or materials for conformity with established operations standards.

5:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 5:1.1 May be required to perform any of the duties of a lower level.
- 5:1.2 Maintaining quality standards including the approval of first-off samples.
- 5:1.3 Basic production scheduling and materials handling within the scope of the process or directly related functions within new materials/finished goods location in conjunction with technicians.
- 5:1.4 Exercising advanced keyboard skills.
- 5:1.5 Assists in the provisions of on the job training in conjunction with trainer.
- 5:1.6 Adjust equipment to meet quality assurance and process requirements of production program.

SECTION THREE—FRUIT AND VEGETABLES PROCESSING AND PACKING

1. LEVEL 1

Employees who are recruited into the Company at this level perform simple routine duties, work under direct supervision and receive detailed instruction.

Level 1 employees exercise minimal judgement and are responsible for the quality of their own work within the scope of this level.

1:1 Typical Tasks

Indicative of the tasks an employee at this level may perform are the following—

- 1:1.1 Undertaking induction training.
- 1:1.2 Routine duties of mainly a manual nature including sorting, packing and assembling of product and may use simple automated processes and mechanised aid.
- 1:1.3 Performing a range of general labouring and cleaning duties.

1:2 Promotional Criteria

Employees remain at this level until such time as they have satisfactorily completed an induction programme which enables them to meet the competency requirements of Level 1A, a position becomes available and they are selected to fill that vacancy.

An induction program covers—

- 1:2.1 Basic occupational health and safety.

1:2.2 First aid.

1:2.3 Conditions of employment.

1:2.4 Company policies/objectives.

1:2.5 Plant layout and material location.

1:2.6 Workplace training to meet the requirements of being able to competently perform work within the scope of Level 2.

1A. LEVEL 1A

Employees at this level perform a range of tasks and in so doing, work above and beyond the skills of an employee at Level 1 and to the level of their training—

- Work under direct supervision either individually or in a team environment.
- Understand and undertake basic quality control.

1A:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 1A:1.1 Undertaking training to enable entry into Level 2.
- 1A:1.2 May be required to perform any of the duties of a lower level.
- 1A:1.3 Cleaning, peeling and processing new products.
- 1A:1.4 Manual packing of products.
- 1A:1.5 Sorting and grading of products with the assistance of automatic or semi-automatic machinery.
- 1A:1.6 Washing, packing, stacking and shrink wrapping of produce using any fixed or mobile equipment as aids to the task.
- 1A:1.7 Assembling products for customer orders.
- 1A:1.8 Using hand trolleys and pallet packs.
- 1A:1.9 Use forklifts having undertaken basic forklift operational training.

1A:2 Promotional Criteria

Employees may be promoted to Level 2 when—

- 1A:2.1 They can competently perform all tasks of a Level 1A employee.
- 1A:2.2 A position becomes available and they are selected to fill that vacancy.

2. LEVEL 2

Employees at this level undertake a range of tasks and to the level of their training:-

- Work under direct supervision either individually or in a team environment.
- Understand and undertake basic quality control/assurance procedures, including the ability to recognise basic quality deviations and faults.
- Exercise minimal decision making.

2:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 2:1.1 Undertaking training to enable entry into Level 3.
- 2:1.2 May be required to perform any of the duties of a lower level.
- 2:1.3 Operating vacuum and other cooling equipment.
- 2:1.4 Undertaking stock storage and product rotating activities.
- 2:1.5 Maintaining production records.
- 2:1.6 Operating forklifts and hold certificate of competency.

2:2 Promotional Criteria

Employees may be promoted to Level 3 when—

- 2:2.1 They can competently carry out all tasks of a Level 2 employee.
- 2:2.2 A position becomes available and they are selected to fill that vacancy.

3. LEVEL 3

Employees at this level have completed a Food Processing Certificate or equivalent training to enable the employees to perform work within the scope of this level.

Employees at this level—

- Are responsible for quality of their own work subject to routine supervision.
- Work under routine supervision either individually or in a team environment.
- Exercise discretion within their level of skills and training.

3:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 3:1.1 Undertake training in a Personnel/Supervisory Preliminary Course.
- 3:1.2 May be required to perform any of the duties of a lower level.
- 3:1.3 Co-ordinate work in a production line.
- 3:1.4 Allocate tasks to other.
- 3:1.5 Assist in the provision of on the job training in conjunction with trainers.
- 3:1.6 Undertake minor adjustment to machinery.

3:2 Promotional Criteria

Employees may be promoted to Level 4 when—

- 3:2.1 They can competently carry out all tasks of a Level 3 employee.
- 3:2.2 A position becomes available and they are selected to fill that vacancy.

4. LEVEL 4

Employees at this level have completed a Production Certificate or equivalent training so as to enable the employees to perform work within the scope of this level.

Employees at this level—

- Work from instructions and procedures.
- Assist in the provision of on the job training.
- Co-ordinate work in a team environment or work individually under general supervision.
- Write and read reports.

4:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 4:1.1 Undertaking training to enable entry into Level 5.
- 4:1.2 May be required to perform any of the duties of a lower level.
- 4:1.3 Using tools and equipment within the scope of basic non-trade maintenance.
- 4:1.4 Exercising intermediate keyboard skills.
- 4:1.5 Supervising the work of their employees.
- 4:1.6 Allocate tasks to other employees.
- 4:1.7 Implement production requirements.
- 4:1.8 Oversee performance of other employees.

4:2 Promotional Criteria

Employees may be promoted to Level 5 when—

- 4:2.1 They can competently perform all tasks of a Level 4 employee.
- 4:2.2 A position becomes available and they are selected to fill that vacancy.

5. LEVEL 5

Employees at this level have completed approved courses in development of supervisory skills. For example; TAFE Supervision Certificate or equivalent.

Employees at this level may hold a Trade Certificate appropriate within the scope of their position and demonstrate their ability to exercise of that trade.

Employees at this level have completed appropriate Production Certificate or equivalent.

Employees at this level—

- Understands and applies quality control techniques.
- Exercises good interpersonal communication skills.
- Exercises discretion within the scope of the grade.
- Exercises keyboard skills at a level higher than Level 5.
- Would be expected to organise and control the work output of a section.
- Is able to inspect products and/or materials for conformity with established operations standards.

5:1 Typical Tasks

- 5:1.1 May be required to perform any of the duties of a lower level.
- 5:1.2 Maintaining quality standards including the approval of first-off samples
- 5:1.3 Basic production scheduling and materials handling within the scope of the process or directly related functions within new materials/finished goods location in conjunction with technicians.
- 5:1.4 Exercising advanced keyboard skills.
- 5:1.5 Assists in the provision of on the job training in conjunction with trainer.

SECTION FOUR—ICE CREAM AND FROZEN CONFECTIONERY MANUFACTURING

1. LEVEL 1

Employees who are recruited into the Company at this level perform simple routine duties, work under direct supervision and receive detailed instruction. Level 1 employees exercise minimal judgement and are responsible for the quality of their own work within the scope of this level.

1:1 Typical Tasks

Indicative of the tasks an employee at this level may perform are the following—

- 1:1.1 Undertaking induction training.
- 1:1.2 Performing a range of general labouring and cleaning duties.

1:2 Promotional Criteria

Employees remain at this level until such time as they have satisfactorily completed an induction program which enables them to meet the competency requirements of Level 2, a position becomes available and they are selected to fill that vacancy.

An induction program covers—

- 1:2.1 Basic occupational health and safety.
- 1:2.2 First aid.
- 1:2.3 Conditions of employment.
- 1:2.4 Company policies/objectives.
- 1:2.5 Plant layout and material location.
- 1:2.6 Workplace training to meet the requirements of being able to competently perform work within the scope of Level 2.

2. LEVEL 2

Employees at this level perform utility (general hand) functions and in so doing, perform work above and beyond the skills of an employee at Level 1 and to the level of their training—

- Work under direct supervision either individually or in a team environment.
- Understand and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations and faults.
- Exercise minimal decision making.
- Exercise discretion within their level of skills and training.

2:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 2:1.1 Undertaking training to enable entry into Level 3.

- 2:1.2 May be required to perform any of the duties of a lower level.
- 2:1.3 Stack, prepare for storage raw and finished products and packaging material.
- 2:1.4 Can washing.
- 2:1.5 Maintaining simple production records.
- 2:1.6 Identify machine faults (basic).
- 2:1.7 Uses hand trolleys and pallet trucks.

2:2 Promotional Criteria

Employees may be promoted to Level 3 when—

- 2:2.1 They can competently carry out all tasks of a Level 2 employee.
- 2:2.2 A position becomes available and they are selected to fill the vacancy.

3. LEVEL 3

Employees at this level have completed a Production Certificate or equivalent training to enable the employees to perform work within the scope of this level.

Employees at this level—

- Are responsible for the quality of their own work subject to routine supervision.
- Work under routine supervision either individually or in a team environment.
- Exercise discretion within their level of skills and training.

3:1 Typical Skills

Indicative of the tasks which an employee at this level may perform are the following—

- 3:1.1 Undertaking training to enable entry into Level 4.
- 3:1.2 May be required to perform any of the duties of a lower level.
- 3:1.3 Receiving, despatching, distributing, sorting, checking, packaging (other than repetitive packing), order assembly, documenting and recording of goods, materials and components.
- 3:1.4 Basic inventory control in the context of a production process.
- 3:1.5 Exercising keyboard skills at basic level.
- 3:1.6 Operation of mobile equipment including forklifts, overhead cranes and winch operation.
- 3:1.7 Carrying out different measurements.
- 3:1.8 Undertake minor adjustments to machinery.
- 3:1.9 Conduct some basic testing.
- 3:1.10 Identify product specification problems.
- 3:1.11 Assisting ice cream freezing machine operating.
- 3:1.12 Assisting cone and wafer machine operating.
- 3:1.13 Freezer hand.
- 3:1.14 Assisting frozen confectionery machine operating.
- 3:1.15 Operating automatic, semi-automatic or single purpose machinery.

3:2 Promotional Criteria

Employees may be promoted to Level 4 when—

- 3:2.1 They can competently carry out all tasks of a Level 3 employee.
- 3:2.2 A position becomes available and they are selected to fill the vacancy.

4. LEVEL 4

Employees at this level have completed a Production Certificate or equivalent training so as to enable employees to perform work within the scope of this level.

Employees at this level—

- Work from instructions and procedures.
- Assist in the provision of on the job training.
- Co-ordinate work in a team environment or work individually under general supervision.
- Write and read reports.

4:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 4:1.1 Undertaking training to enable entry into Level 5.
- 4:1.2 May be required to perform any of the duties of a lower level.
- 4:1.3 Inventory and store control including operations of all appropriate materials handling equipment, VDU and keyboard operation at a level higher than that of Level 3.
- 4:1.4 Using tools and equipment within the scope of basic non-trade maintenance.
- 4:1.5 Exercising intermediate keyboard skills.
- 4:1.6 Supervising the work of their employees.
- 4:1.7 Allocate tasks to other employees.
- 4:1.8 Cone and wafer machine operating.
- 4:1.9 Frozen confectionery machine operating.
- 4:1.10 Ice cream freezing machine operating.
- 4:1.11 Assists in the provision of on the job training in conjunction with trainers and tradespersons.
- 4:1.12 Ice cream cake decorating.

4:2 Promotional Criteria

Employees may be promoted to Level 5 when—

- 4:2.1 They can competently carry out all tasks of a Level 5 employee.
- 4:2.2 A position becomes available and they are selected to fill that vacancy.

5. LEVEL 5

Employees at this level have completed approved courses in the development of supervisory skills. For example; TAFE Supervision Certificate or equivalent.

Employees at this level may hold a Trade Certificate appropriate within the scope of their position and demonstrate their ability to exercise of that trade. Employees at this level have completed appropriate Production Certificate or equivalent.

Employees at this level—

- Understands and applies quality control techniques.
- Exercises good interpersonal communications skills.
- Exercises discretion within the scope of the grade.
- Exercises keyboard skills at a level higher than Level 4.
- Would be expected to organise and control the work output of a section.
- Is able to inspect products and/or materials for conformity with established operations standards.

5:1 Typical Tasks

Indicative of the tasks which an employee at this level may perform are the following—

- 5:1.1 May be required to perform any of the duties of a lower level.
- 5:1.2 Maintaining quality standards including the approval of first-off samples.
- 5:1.3 Basic production scheduling and materials handling within the scope of the process or directly related functions within new materials/finished goods location in conjunction with technicians.
- 5:1.4 Exercising advanced keyboard skills.
- 5:1.5 Assists in the provisions of on the job training in conjunction with trainer.
- 5:1.6 Adjust equipment to meet quality assurance and process requirements of production program.

SECTION FIVE—SEAFOOD PROCESSING

1. LEVEL 1

Employees who are recruited into the Company at this Level receive induction training and perform routine duties either individually or as part of a team under direct supervision. Level

1 employees exercise minimal judgement or responsibility for the quality of their own work within the scope of this Level.

1:1 Typical Tasks

Indicative of the tasks an employee at this Level may perform are the following—

- 1:1.1 General labouring and cleaning duties.
- 1:1.2 Operation of single action equipment.

1:2 Promotional Criteria

Employees may be promoted to Level 2 when—

- 1:2.1 They have satisfactorily completed an induction program.
- 1:2.2 They can competently perform all tasks of a Level 1 employee.
- 1:2.3 They can meet the competency requirements of Level 2.
- 1:2.4 A position becomes available and they are selected to fill that vacancy.

2. LEVEL 2

Employees at this Level perform duties in addition to those of Level 1 that require extra skills performed to the level of their training under routine supervision.

Employees at this Level—

- Work under direct supervision either individually or in a team environment.
- Understand and undertake basic quality control/assurance procedures including the ability to recognise bad quality, deviations and faults.
- Exercise minimal decision making.

2:1 Typical Tasks

Indicative of the tasks which an employee at this Level may perform are the following—

- 2:1.1 Operation of automatic machinery.
- 2:1.2 Manual setting of semi-automatic equipment.
- 2:1.3 Maintenance of basic production records.
- 2:1.4 Grading.
- 2:1.5 Measuring and testing of materials.
- 2:1.6 Pallet jack operating.
- 2:1.7 Entering basic data.

2:2 Promotional Criteria

Employees may be promoted to Level 3 when—

- 2:2.1 They can competently carry out the tasks of a Level 2 employee.
- 2:2.2 They have the relevant production certificates or have completed and passed an approved equivalent training program.
- 2:2.3 A position becomes available and they are selected to fill that vacancy.

3. LEVEL 3

Employees at this Level have attained a production certificate or completed equivalent approved training to competently fulfil the preceding levels and undertake tasks requiring greater skills or responsibility under minimal supervision.

Employees at this Level—

- Are responsible for quality of their own work subject to routine supervision.
- Work under routine supervision either individually or in a team environment.
- Exercise discretion within their Level of skills and training.

3:1 Typical Tasks

Indicative of the tasks which an employee at this Level may perform are the following—

- 3:1.1 Assembling orders and preparing documentation.
- 3:1.2 Checking inward or outwards goods and documentation.
- 3:1.3 Recording shop floor inventory.
- 3:1.4 Set-up and adjustment of process equipment.
- 3:1.5 Recording of process performance.

3:1.6 Control and documentation of inventory.

3:1.7 Assisting with on the job training.

3:1.8 Communicating variations in process specifications.

3:1.9 Hand filleting.

3:1.10 Driving fork trucks (to licence standard).

3:2 Promotional Criteria

Employees may be promoted to Level 4 when—

- 3:2.1 They can competently carry out the tasks of a Level 3 employee.
- 3:2.2 They have the relevant production certificates or have completed and passed an approved equivalent training program.
- 3:2.3 A position becomes available and they are selected to fill that vacancy.

4. LEVEL 4

Employees at this Level have attained a production certificate or completed equivalent approved training to competently fulfil criteria of the preceding Levels and have the skill or technical knowledge to assume responsibility for work centre output quality and performance.

Employees at this Level—

- Work from instructions and procedures.
- Assist in the provision of on the job training.
- Co-ordinate work in a team environment or work individually under general supervision.
- Write and read reports.

4:1 Typical Tasks

Indicative of the tasks which an employee at this Level may perform are the following—

- 4:1.1 Co-ordinating team or group activities.
- 4:1.2 Control and documentation of inventory.
- 4:1.3 Allocation of tasks to other work centre employees.
- 4:1.4 Maintenance of team discipline.
- 4:1.5 Ensuring compliance with Safety regulations.
- 4:1.6 Materials handling and storage.
- 4:1.7 Specialised technical functions: eg. Retort operation.

4:2 Promotional Criteria

Employees may be promoted to Level 5 when—

- 4:2.1 They can competently carry out the tasks of a Level 4 employee.
- 4:2.2 They have the relevant production certificates or have completed and passed an approved equivalent training program.
- 4:2.3 A position becomes available and they are selected to fulfil that vacancy.

5. LEVEL 5

Employees at this Level have completed approved courses in the development of supervisory skills. For example; TAFE Supervision Certificate or equivalent.

Employees at this Level may hold a Trade Certificate appropriate within the scope of their position and demonstrate their ability to exercise the tasks and duties of that trade.

Employees at this Level have completed an appropriate Production Certificate or equivalent.

Employees at this Level—

- Understand and apply quality control techniques.
- Exercise good interpersonal communications skills.
- Exercise discretion within the scope of the grade.
- Exercise keyboard skills at a Level higher than Level 4.
- Would be expected to organise and control the work output of a section.
- Are able to inspect products and/or materials for conformity with established operations standards.

5:1 Typical Tasks

Indicative of the tasks which an employee at this Level may perform are the following—

- 5:1.1 Production scheduling.
- 5:1.2 Work centre recruiting and induction.
- 5:1.3 Allocating staff duties.
- 5:1.4 Employee discipline, development and training.
- 5:1.5 Production administration.
- 5:1.6 Communicating variations in work centre performance.
- 5:1.7 Co-ordinating service support.
- 5:1.8 Maintaining quality standards.
- 5:1.9 Monitoring work centre productivity.
- 5:1.10 Ensuring compliance with Safety regulations.
- 5:1.11 Inventory control.

SECTION SIX—CONFECTIONERY MANUFACTURING

1. LEVEL 1

Employees who are recruited into the Company at this Level perform simple routine duties, work under direct supervision and receive detailed instructions. Level 1 employees exercise minimal judgement and are responsible for the quality of their own work within the scope of this Level.

1:1 Typical Tasks

Indicative of the tasks an employee at this Level may perform are the following—

- 1:1.1 Undertaking induction training.
- 1:1.2 Routine duties of a manual nature including sorting, packing and assembling products. Simple automated processes and mechanical aids may be used.
- 1:1.3 Operation of single action equipment.
- 1:1.4 General labouring and cleaning duties.
- 1:1.5 Tallying, packing and job completion time information.
- 1:1.6 Identifying machine breakdowns.

1:2 Promotional Criteria

Employees remain at this Level until such time as they have satisfactorily completed an induction program which enables them to meet the competency requirements of Level 1A, a position becomes available, and they are selected to fill that vacancy.

An induction program covers—

- 1:2.1 Basic occupational health and safety.
- 1:2.2 First Aid.
- 1:2.3 Conditions of Employment.
- 1:2.4 Company policies/objectives.
- 1:2.5 Plant layout and material location.
- 1:2.6 Workplace skills needed to meet the requirements of being able to competently perform work within the scope of Level 1A.

2. LEVEL 1A

Employees at this Level have completed a production certificate or equivalent training to enable the employee to perform work within the scope of this Level—

- Work under direct supervision individually or in a team environment.
- Understand and undertake basic quality control and assurance procedures including the ability to recognise basic quality deviations and faults.
- Exercise minimal decision making.
- Exercise discretion within the level of skill and training.

1A:1 Typical Tasks

Indicative of the tasks which an employee at this Level may perform are the following—

- 1A:1.1 Undertake training to enable entry to Level 2.

1A:1.2 May be required to perform any of the duties at a lower Level.

1A:1.3 Assist on the production line of an automatic, semi-automatic or single purpose machine in a supervised environment. May involve filling of feeding the line and packing off the line.

1A:1.4 Stock, prepare for storage raw and finished products and packaging material.

1A:1.5 Moulding.

1A:2 Promotional Criteria

Employees may be promoted to Level 2 when—

1A:2.1 They can competently carry out all tasks of Level 1A.

1A:2.2 A position becomes available and they are selected to fill the vacancy.

1A:2.3 The employee has successfully completed a production certificate or equivalent training as required by the Company at the time to be deemed necessary to operate at Level 2.

3. LEVEL 2

Employees at this Level perform utility (general hand) functions and in so doing, perform work above and beyond the skills of an employee at Level 1A and to the level of their training—

- Work unsupervised either individually or in a team environment.
- Understand and undertake basic quality control/assurance procedures including the ability to recognise basic quality deviation and faults.
- Exercise minimal decision making.
- Exercise discretion within their Level of skills and training.

2:1 Typical Tasks

Indicative of the tasks which an employee at this Level may perform are the following—

- 2:1.1 Undertaking training to enable entry into Level 3.
- 2:1.2 May be required to perform any of the duties of a lower Level.
- 2:1.3 Operating automatic, semi-automatic or single purpose machinery.
- 2:1.4 Stock, prepare for storage raw and finished products and packaging material.
- 2:1.5 Moulding.
- 2:1.6 Maintaining simple production records.
- 2:1.7 Identify machine faults (basic).
- 2:1.8 Uses hand trolleys and pallet trucks.

2:2 Promotional Criteria

Employees may be promoted to Level 3 when—

- 2:2.1 They can competently carry out all tasks of a Level 2 employee.
- 2:2.2 A position becomes available and they are selected to fill the vacancy.
- 2:2.3 They have achieved trade creditations as required by the employer.

4. LEVEL 3

Employees at this Level have completed a production certificate or equivalent training to enable the employees to perform work within the scope of this Level.

Employees at this Level—

- Are responsible for the quality of their own work subject to routine supervision.
- Work under routine supervision either individually or in a team environment.
- Exercise discretion within their Level of skills and training.

3:1 Typical Skills

Indicative of the tasks which an employee at this Level may perform are the following—

- 3:1.1 May be required to perform any of the duties of a lower Level.
- 3:1.2 Receiving, dispatching, distributing, sorting, checking, packaging order assembly, documenting and recording of goods, materials and components.
- 3:1.3 Basic inventory control in the context of a production process.
- 3:1.4 Exercising keyboard skills at basic level.
- 3:1.5 Carrying out different requirements.
- 3:1.6 Undertaking adjustments to machinery.
- 3:1.7 Conduct testing.
- 3:1.8 Identifying product specification problems.
- 3:1.9 Confectionery machine operation.

3:2 Promotional Criteria

Employees may be promoted to Level 4 when—

- 3:2.1 They can competently carry out all tasks of a Level 3 employee.
- 3:2.2 A position becomes available and they are selected to fill the vacancy.

5. LEVEL 4

Employees at this Level must have worked directly to a successful standard with a confectioner for a minimum of 3 years and have spent at least 90% of this time performing the following tasks—

- 4:1.1 May be required to perform any of the duties of a lower Level.
- 4:1.2 Able to assist in the preparation of high quality centres.
- 4:1.3 Confectionery making which means the ability to successfully operate the following production types: chocolate tempering, moulding (solid and hollow), enrobing, spinning, high boiled and low boiled preparation and packaging plant.
- 4:1.4 Supervise the work of employees.
- 4:1.5 To assist in the provision of on the job training in conjunction with trainers and trade persons.

4:2 Promotional Criteria

Employees may be promoted to Level 5 when—

- 4:2.1 They can competently carry out all tasks of a Level 5 employee.
- 4:2.2 A position becomes available and they are selected to fill that vacancy.

6. LEVEL 5**5:1 Typical Skills**

Indicative tasks of the Level 5 employee are as follows—

- 5:1.1 May be required to perform any of the duties of a lower Level.
- 5:1.2 Able to develop high quality formulations and the production of first off samples and to develop new product manufacturing and quality control systems and to execute feasibility studies.
- 5:1.3 Basic production scheduling and materials handling within the scope of the process or directly related functions with new materials/finished goods location in conjunction with technicians.
- 5:1.4 To provide accurate production input and output at the necessary quality level and facilitate accurate costing accounting management information requirements.
- 5:1.5 Exercise advanced skills in chocolate tempering, centre formulations, high boiled, low boiled, enrobing, moulding (solid and hollow), wrapping and packaging.

5:1.6 Exercise advanced keyboard skill as it relates to confectionery manufacturing production systems.

5:1.7 Instruct employees at all other skill Levels.

5:1.8 Adjust equipment to meet quality assurance and process requirements of the production program.

Employees at this Level must have the following—

- A trade certificate appropriate within the scope of their position and demonstrated the ability to exercise the skills and duties of that trade, or;
- A minimum of five years work experience with a recognised confectionery manufacturing works as a confectioner, or;
- A European certificate of accreditation, or;
- A skills level which will enable achievement of Quality Assurance Certifications, research and development grants and other special accreditations.

Employees at this Level—

- Understand and apply quality control techniques.
- Exercise good interpersonal communication skills.
- Exercise discretion with the scope of the grade.

APPENDIX 1.—PARENTAL LEAVE ENTITLEMENTS**(1) Maternity Leave****(a) Nature of Leave**

Maternity leave is unpaid leave

(b) Definitions

For the purposes of this subclause—

- (i) “Paternity leave” means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
- (ii) “Child” means a child of the employee under the age of one year.

(c) Eligibility for Maternity Leave

An employee who becomes pregnant, upon production to the Employer of the certificate required by paragraph (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child’s first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee’s spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave, specified in the relevant statutory declaration.

Subject to paragraphs (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement include a period of six weeks compulsory leave. Notwithstanding the requirement to take compulsory leave, an employee may request to return to work at any time, subject to the agreement of the employer.

The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certification

At the time specified in paragraph (e) the employee must produce to the Employer;

- (i) A certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engaged in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

- (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to the employer the certificate referred to in subparagraph placitum (i) of paragraph (d) above.

- (ii) An employee shall give not less than four weeks notice in writing to the Employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to the Employer the statutory declaration referred to in placitum (ii) of paragraph (d) above.
- (iii) The Employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to the presumed date of confinement.
- (iv) An employee shall not be in breach of this Clause as a consequence of failure to give the specified period of notice in accordance with placitum (ii) hereof if such failure is occasioned by—
- (aa) the confinement occurring earlier than the presumed date, or
 - (bb) compelling circumstances, it was not reasonably practicable for the employee to comply; or
 - (cc) by the employee submitting the application as soon as reasonably practicable before, on or after the first day of the leave.
- (f) **Transfer to a Safe Job**
- Where in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the Employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- If the transfer to a safe job is not practicable, the employer may, or the Employer may require the worker to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of paragraphs (j), (k), (l) and (m) hereof.
- (g) **Variation of Period of Maternity Leave**
- (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof;
 - (aa) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (bb) The period may be further lengthened by agreement between the employee and the Employer.
 - (ii) The period of maternity leave may, with the consent of the Employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (h) **Cancellation of Maternity Leave**
- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a employee terminates other than by the birth of a living child.
 - (ii) Where the pregnancy of a employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the Employer which shall not exceed four weeks from the date of notice in writing by the employee to the Employer that she desires to resume work.
- (i) **Special Maternity Leave and Sick Leave**
- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
 - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, or
 - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
 - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under paragraph (c) hereof.
 - (iii) For the purposes of paragraph (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
 - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this paragraph shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (f), hereof to the position she held immediately before such transfer.
- Where such position no longer exists but there are other positions available, for which the employee is qualified for and is capable of performing she shall be entitled to a position as nearly comparable in status and pay to that of her former position.
- (j) **Maternity Leave and Other Leave Entitlements**
- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, an employee may in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
 - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) **Effect of Maternity Leave on Employment**
- Subject to this subclause, irrespective of any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) **Termination of Employment**
- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
 - (ii) The Employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of the Employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the Employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part time during the pregnancy the position she held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before the Employer engages a replacement employee the Employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before the Employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, the Employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(2) Paternity Leave

(a) Nature of Leave

Paternity leave is unpaid leave

(b) Definitions

For the purposes of this subclause

- (i) "Maternity leave" means leave of the type provided for in subclause (1) of this clause and includes special maternity leave whether prescribed in an award or otherwise.
- (ii) "Child" means a child of the employee or the employee's spouse under the age of one year.
- (iv) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(c) Eligibility for Paternity Leave

A male employee upon production to the Employer of the certification required by paragraph (f) hereof, shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) An unbroken period of up to one week at the time of confinement of his spouse;
- (ii) A further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in

relation to the same child and shall not be taken concurrently with that maternity leave.

The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which he proceeds upon either period of leave.

(d) Certification

At the time specified in paragraph (e) the employee must produce to the Employer;

- (i) A certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (ii) in relation to any period to be taken under placitum (ii) of paragraph (c) hereof, a statutory declaration stating:
 - (aa) He will take that period of paternity leave to become the primary care-giver of a child;
 - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
 - (cc) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

- (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the Employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in paragraph (d) hereof.
- (ii) The employee shall not be in breach of this paragraph as a consequence of failure to give the notice required in paragraph (a) hereof if such failure is due to—
 - (aa) The birth occurring earlier than the expected date; or
 - (bb) the death of the mother of the child; or
 - (cc) other compelling circumstances.
- (iii) The employee shall immediately notify the Employer of any change in the information provided pursuant to paragraph (d) hereof.

(f) Variation of Period of Paternity Leave

- (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof—
 - (aa) The period of paternity leave provided by placitum (ii) of paragraph (c) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (bb) The period may be further lengthened by agreement between the Employer and the employee.
- (ii) The period of paternity leave taken under placitum (ii) of paragraph (c) hereof may, with the consent of the Employer be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Paternity Leave

- (i) Paternity leave, applied for under placitum (ii) of paragraph (c) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (ii) Paternity leave shall terminate within a reasonable period if the employee ceases to be the child's primary care giver.

(h) Paternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.

(i) Effect of Paternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(j) Termination of Employment

- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Award.
- (ii) The Employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of the Employer in relation to termination of employment are not hereby affected.

(k) Return to Work After Paternity Leave

- (i) An employee shall confirm his intention of returning to work by notice in writing to the Employer given not less than four weeks prior to the expiration of the period of paternity leave provided by placitum (ii) of paragraph (c) hereof.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by placitum (i) above, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation to an employee who has worked part time under this clause to the position he held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.

(l) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before the Employer engages a replacement employee the Employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before the Employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this subclause, the Employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(3) Adoption Leave

(a) Nature of Leave

Adoption leave is unpaid leave

(b) Definitions

For the purposes of this subclause

- (i) "Child" means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) "Relative Adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of whole blood or half blood or by marriage).
- (iii) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(c) Eligibility

An employee, upon production to the Employer of the certification required by paragraph (d) hereof, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) An unbroken period of up to three weeks at the time of placement of the child;
- (ii) An unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by—
 - (aa) Any period of leave taken pursuant to placitum (i) above; and
 - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which he or she proceeds on such leave in either case.
- (iii) The entitlement to adoption leave must not overlap with any periods of adoption leave taken by the employee's spouse, except an unbroken period of up to three weeks at the time of placement of the child.

(d) Certification

Before taking adoption leave the employee must produce to the Employer;

- (i) (aa) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
- (bb) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) in relation to any period to be taken under placitum (ii) of paragraph (3) hereof, a statutory declaration stating:
 - (aa) The employee is seeking adoption leave to become the primary care-giver of the child;
 - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and

- (cc) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.
- (e) Notice Requirements
- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the Employer of such approval and within two months of such approval shall further notify the Employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
 - (ii) An employee who commences employment with the Employer after the date of approval for adoption purposes shall notify the Employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the Employer immediately preceding the date upon which he or she proceeds upon such leave.
 - (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under placitum (i) of paragraph (c) hereof.
 - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under placitum (ii) of paragraph (c) hereof, give notice in writing to the Employer of the date of commencing leave and the period of leave to be taken.
 - (v) An employee shall not be in breach of this subclause, as a consequence of failure to give the stipulated period of notice in accordance with placitum (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under paragraph (c) hereof—
 - (aa) The period of leave taken under placitum (ii) of paragraph (c) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (bb) The period may be further lengthened by agreement between the Employer and the employee.
 - (ii) The period of adoption leave taken under placitum (ii) of paragraph (c) hereof may, with the consent of the Employer be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
 - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the Employer forthwith and the Employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (iii) Adoption leave shall terminate within a reasonable period if the employee ceases to be the child's primary care giver.
- (h) Special Leave
- The Employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the Employer may require the employee to take such leave in lieu of special leave.
- (i) Adoption Leave and Other Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (3) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
 - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this subclause, irrespective of any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
 - ii) The Employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of the Employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- i) An employee shall confirm the intention of returning to work by notice in writing to the Employer given not less than four weeks prior to the expiration of the period of adoption leave provided by placitum (ii) of paragraph (c) hereof.
 - ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or, in relation to an employee who has worked part time under this clause to the position held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.
- (m) Replacement Employees
- i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
 - ii) Before the Employer engages a replacement employee the Employer shall inform that person of the temporary nature of the employment

- and of the rights of the employee who is being replaced.
- iii) Before the Employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this subclause, the Employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- iv) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.
- (4) Part Time Work
- (a) Definitions
- For the purpose of this subclause—
- (i) “Male employee” means a employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.
- (ii) “Female employee” means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (iii) “Former position” means the position held by a female or male employee immediately before proceeding on leave or part time employment under this subclause whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing a position as nearly comparable in status and pay to that of the position first mentioned in this definition.
- (b) Entitlement
- With the agreement of the Employer—
- (i) A male employee may work part time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (ii) A female employee may work part time in one or more periods while she is pregnant where part time employment is, because of the pregnancy, necessary or desirable.
- (iii) A female employee may work part time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- (iv) In relation to adoption a female employee may work part time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.
- (c) Return to Former Position
- (i) An employee who has had at least 12 months continuous service with the Employer immediately before commencing part time employment after the birth or placement of a child has, at the expiration of the period of such part time employment or the first period, if there is more than one, the right to return to his or her former position.
- (ii) Nothing in placitum (i) hereof shall prevent the Employer from permitting the employee to return to his or her former position after a second or subsequent period of part time employment.
- (d) Effect of Part time Employment on Continuous Service
- Commencement on part time work under this clause, and return from part time work to full time work under this clause, shall not break continuity of service or employment.
- (e) Pro Rata Entitlements
- Subject to the provisions of this subclause and the matters agreed to in accordance with paragraph (f) hereof, part time employment shall be in accordance with the provisions of this award which shall apply pro-rata.
- (f) Part time Work Agreement
- (i) Before commencing a period of part time employment under this subclause the employee and the Employer shall agree—
- (aa) That the employee may work part time; Upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
- (bb) Upon the classification applying to the work to be performed; and
- (cc) Upon the period of part time employment.
- (ii) The terms of this agreement may be varied by consent.
- (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the Employer. A copy of the agreement and any variation to it shall be provided to the employee by the Employer.
- (iv) The terms of this agreement shall apply to the part time employment.
- (g) Termination of Employment
- (i) The employment of a part time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the Employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (ii) Any termination entitlements payable to an employee whose employment is terminated while working part time under this clause, or while working full time after transferring from part time work under this clause, shall be calculated by reference to the full time rate of pay at the time of termination and by regarding all service as a full time employment and all service as a part time employee on a pro-rata basis.
- (h) Extension of Hours of Work
- The Employer may request, but not require, an employee working part time under this clause to work outside or in excess of the employee’s ordinary hours of duty provided for in accordance with paragraph (f).
- (i) Nature of Part Time Work
- The work to be performed part time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.
- (j) Inconsistent Award Provisions
- An employee may work part time under this clause irrespective of any other provision of this award which limits or restricts the circumstances in which part time employment may be worked or the terms upon which it may be worked including provisions prescribing a minimum or maximum number of hours a part time employee may work.
- (k) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee working part time under this subclause.

- (ii) A replacement employee may be employed part time. Subject to this paragraph, paragraphs (e), (f), (g) and (j) of this subclause apply to the part time employment of a replacement employee.
- (iii) Before an employer engages a replacement employee under this paragraph, the Employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of placitum (v) of paragraph (a) hereof.
- (v) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

33.—SUPPORTED WAGES EMPLOYEES

(1) The clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause the following definitions will apply—

- (a) "Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "[Supported Wage System: Guidelines and Assessment Process]".
 - (b) "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
 - (c) "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
 - (d) "Assessment Instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.
- (2) Eligibility Criteria
- (a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.
 - (b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.
 - (c) The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

(3) Supported Wage Rates

Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed

by this award for the class of work which the person is performing according to the following schedule—

Assessed Capacity (Sub-clause 4)	% of Prescribed Award Rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall not be less than \$45 per week).

* Where a person's assessed capacity is 10 per cent, they shall receive a high degree of assistance and support.

(4) Assessment of Capacity

For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either—

- (a) the employer and the union, in consultation with the employee or, if desired, by any of these;
- (b) the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

(5) Lodgement of Assessment Instrument

- (a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.
- (b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

(6) Review of Assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(7) Other Terms and Conditions of Employment

Where an assessment has been made the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other employees covered by this award paid on a pro-rata basis.

(8) Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other employees in the area.

(9) Trial Period

- (a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (c) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.

- (d) Work trials should include induction or training as appropriate to the job being trialed.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the assessment under subclause (4) of this clause.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENTS

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Any dispute or grievance procedure in this award/industrial agreement shall also apply to any questions, disputes or difficulties which may arise under it.

(3) This Appendix shall come into effect on and from 16 August 1996.

SCHEDULE OF RESPONDENTS

Anchor Products Pty Ltd
148 Carrington Street
O'CONNOR WA 6163

Arnotts Mills and Wares Pty Ltd
334 South Terrace
FREMANTLE WA 6160

Australian Poultry Ltd
116 Howe Street
OSBORNE PARK WA 6017

Azzura Gelati
7 Zeta Crescent
O'CONNOR WA 6163

Baldivis Poultry Processors & Rockingham Chicken Suppliers
RM 13, 154 Mandurah Road
BALDIVIS WA 6171

CCA Snack Foods Pty Ltd
38 Bannister Road
CANNING VALE WA 6155

D. & J. Fowler (Aust) Ltd
24 Coulston Way
CANNING VALE WA 6155

Edgell-Birds Eye
Franklin Street
MANJIMUP WA 6258

Festive Foods
7 Madison Street
CANNING VALE WA 6155

Golden West Foods
56 Kerosene Lane
BALDIVIS WA 6171

Inghams Enterprises Pty Ltd
Baden Street
OSBORNE PARK WA 6017

Kailis & France Pty Ltd
14 Neil Street
OSBORNE PARK WA 6017

Meadow Lea Margarine (WA) & Co Pty Ltd
6 Absolon Road
PALMYRA WA 6157

Mercer-Mooney
MP 16 Market City
280 Bannister Road
CANNING VALE WA 6155

MG Kailis Gulf Fisheries Pty Ltd
12 Stirling Highway
NEDLANDS WA 6009

Peters (WA) Ltd
465 Scarborough Beach Road
OSBORNE PARK WA 6017

Prepact Processors & Packers
125 Garling Street
O'CONNOR WA 6163

Prepact Pty Ltd
125 Garling Street
O'CONNOR WA 6163

Promark Ltd
280 Bannister Road
CANNING VALE WA 6155

Southern Processors Ltd
Princess Royal Drive
ALBANY WA 6330

Sumich Group Ltd
Mandogalup Road
SOUTH COOGEE WA 6166

Sunshine Pickle Co.
15 Kirke Street
BALCATTWA WA 6021

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award/industrial agreement/order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award/industrial agreement/order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement/order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

FUNERAL DIRECTORS' ASSISTANTS' AWARD. No. 18 of 1962.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 1st day of September 1997.

J. SPURLING,
Registrar.

Funeral Directors' Assistants' Award

1.—TITLE

This award shall be known as the Funeral Directors' Assistants' Award No. 18 of 1962 as amended and consolidated.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
- 1A Statement of Principles—August 1996
2. Arrangement
3. Area
4. Scope
5. Term
6. Hours
7. Definitions
8. Accommodation and Night Work
9. Meal Times and Meal Allowances
10. Wages
11. Overtime
12. Public Holidays
13. Sick Leave
14. Contract of Service
15. Special Rates and Provisions
16. Right of Entry
17. Time and Wages Record
18. Board of Reference
19. Mixed Functions
20. Under-Rate Workers
21. Casual Workers
22. Piece Workers
23. Provision of Appliances
24. Outside Work
25. Payment of Wages
26. Standing By
27. Car Allowance

28. Annual Leave
29. Long Service Leave
30. Protective Clothing
31. Bereavement Leave
32. Maternity Leave
33. Location Allowances
34. Effect of 38 Hour Week
35. Part-Time Workers
36. Shift Work
37. Superannuation
38. Award Modernisation and Enterprise Consultation
- Appendix—Resolution of Disputes Requirement
- Schedule A—Parties to the Award
- Schedule B—Respondents
- Appendix—S.49B—Inspection Of Records Requirements

3.—AREA

This award shall operate throughout the State south of the 26th parallel of south latitude.

4.—SCOPE

This award shall apply to workers classified in Clause 10.—Wages and employed by the Respondents but shall have no application to workers who are provided with accommodation on the employer's premises and who perform no duties other than attending to telephone calls and enquiries.

5.—TERM

The term of this award shall be for a period of three years from the beginning of the first pay period commencing on or after the date hereof. (The date of this award is the 11th June, 1964).

6.—HOURS

(1) From May 1, 1985, and subject to the provisions of this clause, the ordinary hours of duty shall be an average of 38 per week with the hours actually worked being 40 per week or 80 per fortnight to be worked eight hours per day on any five days of the week or ten days of the fortnight.

Except where provided elsewhere, the ordinary hours shall be worked with two hours of each week's work accruing as an entitlement to a maximum of 12 Accrued Day(s) Off in each 12 month period. The Accrued Day(s) Off shall be taken at a time mutually acceptable to the employer and the worker.

(2) By agreement between the Union and an employer and in consultation with the workers covered by this award, the ordinary hours of a worker in lieu of the provisions of subclause (1) hereof, may be worked—

- (a) Within a 20 day, four week cycle with 0.4 of an hour of each day worked accruing as an entitlement to take the 20th day in each cycle as an Accrued Day Off.
- (b) Within a ten day, two week cycle, with an adjustment to hours worked to enable 76 hours to be worked over nine days of the two week cycle and an entitlement to take the 10th day in each cycle as an Accrued Day Off.
- (c) Within a five day, one week cycle, of 38 hours.

(3) An employer and worker may by agreement substitute the Accrued Day Off the worker is to take off for another day in which case the Accrued Day Off shall become an ordinary working day.

(4) Except in the case of After Hours Attendants, the ordinary hours shall be worked between 7.00 a.m. and 6.00 p.m. from Monday to Friday inclusive.

(5) The ordinary starting or finishing time shall not be altered except by agreement between the employer, the Union and the workers concerned or in default of agreement, by a Board of Reference.

(6) Any dispute between an employer and the Union concerning the operation of this clause shall be referred to the W.A. Industrial Relations Commission.

(7) Where Accrued Days Off are allowed to accumulate, the employer may require that they be taken within 12 months of the employee becoming entitled to an ADO.

(8) Nothing in this clause shall be construed to prevent the employer and the majority of employees affected in a workplace or part thereof reaching an agreement to operate any method of working a 38 hour week provided that agreement is reached in accordance with the following procedure—

- (a) the Union will be notified in writing of the proposed variations prior to any change taking place;
- (b) the proposed variations for each workplace or part thereof shall be explained to the employees concerned and written notification of proposals will be placed on the notice board at the worksite;
- (c) the parties will then consult with each other on the changes with a view to reaching agreement;
- (d) where the majority of Union members do not support the agreement then the issues will be referred to the Western Australian Industrial Relations Commission for conciliation and, if necessary, arbitration.

7.—DEFINITIONS

(1) "Branch Officer" shall mean a worker who is appointed as such and who is required to reside on or in the close vicinity of a funeral director's business premises and who may be employed in any capacity in the industry.

(2) "After Hours Attendant" shall mean a worker who is not a branch officer, but who is required to perform his duties outside the hours worked by other workers of his employer.

(3) In the case of a Branch Officer or After Hours Attendant provided by the employer with accommodation on or in the close vicinity of the employer's business premises the term "work" shall not include time spent by the worker sleeping or resting or otherwise being on the employer's premises, unless the worker is performing duties required of him such as answering calls, arranging funerals, cleaning, etc.

(4) "Embalmer" shall mean an employee who is primarily engaged for the purpose of embalming bodies and who is a member of a recognised institute of embalmers and who may be employed also in any other capacity in the undertaking industry covered by this award with the exception of the making and/or polishing of coffins.

(5) "Accrued Day(s) Off" means the paid day(s) off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed in Clause 6.—Hours of this award.

8.—ACCOMMODATION AND NIGHT WORK

(1) Branch Officer or After Hours Attendant shall be provided with suitable accommodation at the employer's expense on or in the close vicinity of the employer's business premises, or alternatively an After Hours Attendant may be paid fifteen per cent in addition to his ordinary rate of wage.

(2) After Hours Attendants who are not provided with accommodation and Branch Officers shall be relieved of their duties every second Sunday and two nights per week or for equivalent periods as agreed between the worker and the employer.

9.—MEAL TIMES AND MEAL ALLOWANCES

(1) No worker shall be compelled to work for more than five hours without a break for a meal, such break to be not less than thirty minutes nor more than one hour.

(2) When a worker is required for duty during any meal time, whereby his/her meal time is postponed for more than thirty minutes, he/she shall be paid at overtime rates until he/she gets his/her meal.

(3) (a) Subject to the provisions of paragraph (b) of this subclause an employee, required to work overtime for more than two hours, shall be supplied with a meal by the employer or be paid \$6.30 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or paid \$5.05 for each meal so required.

(b) The provisions of paragraph (a) of this subclause do not apply—

- (i) in respect of any period of overtime for which the employee has been notified on the previous day or earlier that he/she will be required; or

- (ii) to any employee who lives in the locality in which the place of work is situated in respect of any meal for which he/she can reasonably go home.

(c) If an employee to whom subparagraph (i) of paragraph (b) of this subclause applies has, as a consequence of the notification referred to in that subparagraph, provided himself/herself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, he/she shall be paid, for each meal provided and not required, the appropriate amount prescribed in paragraph (a) of this subclause.

10.—WAGES

(1) The minimum weekly rate of wage payable to employees covered by this award shall be as follows—

	Base Rate	Arbitrated Safety Net Adjustments 1, 2 and 3	Minimum Weekly Rate
	\$	\$	\$
Branch Officer—			
First 3 months of employment	379.40	24.00	403.40
After 3 months of employment	424.90	24.00	448.90
After 12 months of employment	428.40	24.00	452.40
After 24 months of employment	432.00	24.00	456.00
Embalmer—			
First 3 months of employment	372.10	24.00	396.10
After 3 months of employment	417.60	24.00	441.60
After 12 months of employment	421.20	24.00	445.20
After 24 months of employment	424.80	24.00	448.80
Coffin Maker and/or Coffin Polisher—			
First 3 months of employment	368.10	24.00	392.10
After 3 months of employment	413.50	24.00	437.50
After 12 months of employment	417.10	24.00	441.10
After 24 months of employment	420.70	24.00	444.70
General Assistants			
After Hours Attendants—			
First 3 months of employment	349.10	24.00	373.10
After 3 months of employment	394.50	24.00	418.50
After 12 months of employment	398.10	24.00	422.10
After 24 months of employment	401.70	24.00	425.70

(2) Any employee in the Head Office who arranges and attends to funeral business shall be paid the rate prescribed for a Branch Officer while employed on such work.

(3) Leading Hands: Any employee placed by the employer in charge of three or more other employees shall be paid \$17.80 per week in addition to the amounts prescribed in this clause.

(4) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

11.—OVERTIME

(1) For all work done beyond the ordinary hours of duty, payment shall be made at the rate of time and one-half for the first three hours and double time thereafter.

For the purposes of this subclause, the ordinary hours shall mean the hours of work fixed in any establishment in accordance with Clause 6—Hours of this award.

(2) (a) All work done by workers other than After Hours Attendants on Saturday after 12.00 noon and on Sundays shall be paid for at the rate of double time.

(b) All work done by worker other than After Hours Attendants on the holidays prescribed in Clause 12.—Public Holidays of this award shall be paid for at the rate of double time and a half.

Provided that a Branch officer or an After Hours Attendant who is required by the employer to remain on the employer's premises on a public holiday shall have added to his/her annual leave an additional day and a half on full pay for each

such holiday or alternatively an additional day and a half payment shall be made.

A worker who receives payment or additional leave in accordance with this proviso shall not also be entitled to double time and a half for work performed on the holiday.

(3) An employer may require any worker to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirement.

(4) No union, party to this award or worker or workers covered by this award, shall in any way whether directly or indirectly be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

(5) In the calculation of overtime rates, each day's work shall stand alone.

(6) When a worker is recalled to work after leaving the job he/she shall be paid for a minimum of two hours' work at the appropriate rate, provided that this subclause shall not apply to casuals or workers provided with accommodation or paid the loading required in accordance with Clause 8.—Accommodation and Night Work of this award. Such worker shall also be reimbursed for all reasonable expenses incurred in returning to work.

(7) (a) By agreement between the employee and employer time off in lieu of payment for overtime may be granted proportionate to the payment to which the employee is entitled. Such time to be taken in unbroken periods according to each period of overtime worked unless otherwise agreed between the employee and employer concerned.

(b) The actual period of time off may be accrued and taken at a time agreed between the employer and employee concerned.

12.—PUBLIC HOLIDAYS

(1) The following days or days observed in lieu shall, subject to Clause 11.—Overtime of this award, be allowed as holidays without deduction of pay, namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause: Provided further that an employer may substitute Royal Show Day for Sovereign's Birthday in any year.

(2) When any of the days mentioned in subclause (1) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(3) Where—

(a) a day is proclaimed as a public holiday or as a public half-holiday under Section 7 of the Public and Bank Holidays Act, 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State, that day shall be a public holiday or, as the case may be a public half-holiday for the purposes of this award within the district or locality specified in the proclamation.

(4) On any public holiday not prescribed as a holiday under this award the employer's establishment or place of business may be closed in which case a worker need not present him/herself for duty and payment may be deducted but if work be done ordinary rates of pay shall apply.

(5) When any of the days observed as a holiday prescribed in this clause fall on a day when a worker is on an Accrued Day Off the worker shall be allowed to take a day's holiday in lieu of the holiday on a day immediately following the worker's annual leave or at a time mutually acceptable to the employer and the worker.

(6) A worker whilst on a public holiday prescribed by this clause shall continue to accrue an entitlement to an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6.—Hours of this award.

(7) Where an employee has additional leave granted pursuant to subclause (5) of this clause, the employer may require such leave to be taken within twelve months of falling due.

13.—SICK LEAVE

(1) (a) A worker who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer a worker is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the worker's services terminate, if before the end of that year of service, to the extent that the worker has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the worker if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that a worker shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the worker shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to a worker who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the worker shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificates.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker who suffers personal ill health or injury during the time when he is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the worker of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 12.—Holidays and Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken

provided that the annual leave loading prescribed in Clause 12.—Holidays and Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the worker's service has been deemed continuous in accordance with subclause (3) of clause 2 of the Long Service Leave provisions published in volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the worker at the date of transmission from service with the transmitter shall stand to the credit of the worker at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose injury or illness is the result of the worker's own misconduct.

(8) The provisions of this clause do not apply to casual workers.

(9) (a) A worker who works 40 actual hours each week during a particular work cycle shall be paid the wages he would have received had he not proceeded on sick leave and shall have the accrued entitlement to paid sick leave reduced by the time the worker is absent from work on account of paid sick leave.

(b) A worker who works 38 ordinary hours each week during a particular work cycle shall be paid in respect of any absence the normal pay the worker would have received had such worker been at work during the absence.

(c) A worker shall not be entitled to claim payment for non-attendance on the ground of personal ill-health or injury nor will the worker's sick leave entitlements be reduced if such personal ill-health or injury occurs on a day when a worker is absent on an Accrued Day Off in accordance with the provisions of subclauses (1) and (2) of Clause 6—Hours of this award unless such illness is for a period of seven consecutive days or more and in all other respects complies with the requirements of subclause (5) hereof.

(10) A worker whilst on paid sick leave shall continue to accrue an entitlement to an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6—Hours of this award.

(11) Any sick leave entitlement accumulated as at May 15, 1985 shall be adjusted in hours in the ratio of 38 to 40.

14.—CONTRACT OF SERVICE

(1) Except in the case of a casual employee whose engagement shall be by the hour or a probationary worker, one week's notice given at any time on either side shall be required before the engagement of any employee shall be terminated.

(2) If an employer or an employee fails to give the required notice, one week's wages shall be paid or forfeited.

(3) The employer may engage an employee on a probationary period for not longer than three months during which time it will be possible for either the employee or employer to end the contract with one day's notice.

(4) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

15.—SPECIAL RATES AND CONDITIONS

(1) An employee who is required to come into contact with a body which is in an advanced state of decomposition shall be paid \$13.00. No employee shall be entitled to more than one payment in respect of each such case.

(2) An employee who is required to do any work in connection with an exhumation shall receive an allowance of \$40.00 for each body exhumed. No worker shall be entitled to more than one payment in respect to each such case.

(3) Where a worker is required by the employer to wear a uniform such uniform shall be supplied and laundered by the employer. Any worker required to wash, polish or service a motor vehicle shall be supplied with all necessary protective clothing and footwear. The employer shall supply shirts to an employee where such are required by the employer to be of a specific design and/or colour. Any matter of disagreement between an employer and his employees arising from the application of the provisions of this subclause shall be referred

to a Board of Reference for determination if not resolved by conciliation.

16.—RIGHT OF ENTRY

(1) Accredited representatives of the Union shall be permitted to interview the employees on the business premises of the employer during non-working times or meal breaks.

(2) Provided that the duly accredited representative shall notify the employer beforehand of their intention to exercise their rights under this clause.

17.—TIME AND WAGES RECORD

(1) The employer shall keep, or cause to be kept, a record in which shall be entered weekly—

- (a) the name and address of each worker to whom this award applies;
- (b) the nature of the work performed;
- (c) the hours worked each day;
- (d) the amount of wages and overtime (if any) received by the worker each week.

(2) The said record shall be signed by the worker if correct.

(3) Such record shall be open for inspection at the employer's business premises by a duly accredited representative of the union during working hours: Provided that if the representative does not give twenty-four hours' notice of his intention to inspect the record and the record be not available when the representative calls, it shall be made available for inspection within twenty-four hours at the employer's business premises.

18.—BOARD OF REFERENCE

(1) The Commission hereby appoints for the purposes of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to Regulation 52 of the Industrial Arbitration Act (Western Australian Industrial Commission) Regulations 1974.

(2) The Board of Reference is hereby assigned the function of allowing, approving, fixing, determining or dealing with any matter of difference between the parties in relation to any matter which, under this award, may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

19.—MIXED FUNCTIONS

A worker engaged for more than two hours of any day or shift on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for such day or shift. If employed for not more than two hours of one day or shift he shall be paid the higher rate for the time so worked.

20.—UNDER-RATE WORKERS

(1) Any worker who by reason of old age or infirmity is unable to earn the minimum wage, may be paid such lesser wage as may from time to time be agreed upon in writing between the Union and the employer.

(2) In the event of no agreement being arrived at, the matter may be referred to the Board of Reference for determination.

(3) After application has been made to the Board, and pending the Board's decision, the worker shall be entitled to work for and be employed at the proposed lesser rate.

21.—CASUAL WORKERS

Any worker dismissed through no fault of his/her own before the expiration of six weeks of employment shall be considered casual and shall receive 20 per cent above the rate prescribed for the work performed. The minimum engagement of casuals shall be one hour.

22.—PIECEWORK

(1) An employer may make a contract with a worker, or group of workers for payment by results by piecework.

(2) A worker working under any system of payment by results shall be paid at least the time rate of pay apportioned if necessary, plus 10 per cent.

(3) Where a worker works part of a week at piecework rates and part at time rates he shall be paid so much as he is entitled to receive under piecework rates for the amount of work done, and, in addition thereto, such proportionate amount at time rates as prescribed in this award for the portion of the week worked at time rates.

23.—PROVISION OF APPLIANCES

The employer shall provide the following tools or articles when required: Cramps, G-cramps, Glue brushes and pots, saw files, bit not ordinarily used in a brace, oil stones, spanners required for machines, emery wheels not less than 1.5 in. thickness, brushes and rags for polishers. All appliances shall be maintained in reasonable working condition.

24.—OUTSIDE WORK

(1) When a worker is sent to outside work, the employer shall pay all fares, and a proper allowance at current rates shall be paid for all necessary meals.

(2) When a worker is engaged at such a distance that he cannot return at night, suitable board and lodging shall be found at the employer's expense.

(3) Travelling time outside ordinary working hours shall be paid for at ordinary rates, up to a maximum of twelve hours in any twenty-four hour period from the time of starting on the journey: Provided that when the travelling is by boat, not more than eight hours shall be paid for in such period.

25.—PAYMENT OF WAGES

(1) A worker may be paid his wages either weekly or fortnightly in cash, by cheque or into his bank account or any other account nominated by the worker.

(2) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

(3) Where the employer is paying wages into employee accounts spread across four or more financial institutions then the employer through discussion with the employees concerned may limit the number of financial institutions involved to a maximum of two or three.

26.—STANDING BY

A worker other than a Branch Officer or After Hours Attendant called upon to stand by, that is to hold him/herself available if wanted, shall be paid the following rates—

- (1) Between the hours of 5.30 p.m. and midnight (Monday to Friday)—\$7.85 per night.
- (2) Between 7.00 a.m. and midnight on a Saturday, Sunday or any of the holidays prescribed in Clause 12.—Public Holidays of this award—\$17.00 per day.
- (3) The allowances prescribed in subclauses (1) and (2) hereof shall be in addition to appropriate payments for any work done during the hours therein mentioned.
- (4) Subject to subclause (6) of Clause 11.—Overtime of this award, any worker who is required to stand by and is called back between the hours of midnight and 7.00 am on any day shall be paid at the rate of double time for the hours so worked.

27.—CAR ALLOWANCE

Where an employee is required and authorised to use his/her own motor vehicle he/she shall be paid 49.4¢ per kilometre for each kilometre travelled on his/her employer's business.

28.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his/her employer after a period of 12 months' continuous service with that employer.

(2) A worker before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on leave during the relevant period.

(3) During a period of annual leave a worker shall be paid a loading of 17.5% calculated on his/her ordinary wage as prescribed.

(4) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(5) (a) A worker whose employment terminates after he/she has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period shall be given payment as prescribed in subclauses (2) and (3) of this clause in lieu of

that leave or in lieu of so much of that leave as has not been allowed unless—

- (i) he/she has been justifiably dismissed for misconduct; and
- (ii) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(b) If, after one month's continuous service in any qualifying twelve monthly period, a worker lawfully leaves his employment or his employment is terminated by the employer through no fault of the worker, the worker shall—

- (i) if such termination occurs before 15 May, 1985, be paid 3.08 hours' pay at the rate of wage prescribed by subclause (4) of this clause, divided by 40 in respect of each completed week of continuous service;
- (ii) if termination occurs on or after 15 May, 1985, be paid 2.923 hours' pay at the rate of wage prescribed by subclause (4) of this clause, divided by 38, in respect of each completed week of continuous service.

(6) If any award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(7) Any time in respect of which a worker is absent from work except for which he/she is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award shall not count for the purpose of determining his/her right to annual leave.

(8) The provisions of this clause shall not apply to casual workers.

(9) In special circumstances and by mutual consent of the employer, the worker and the union, annual leave may be taken in not more than two periods.

(10) When a worker proceeds on the four weeks' annual leave prescribed by subclause (1) of this clause there will be no accrual towards an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6.—Hours of this Award. Accrual toward an Accrued Day Off shall continue during any other period of annual leave prescribed by subclause (6) of this clause.

(11) Any annual leave entitlement as at May 15, 1985 shall be adjusted in hours in the ratio of 38 to 40.

(12) An employer may specify a reasonable period during which annual leave may not be taken to meet production requirements at the workplace concerned.

(13) An employer may require an employee to take annual leave within twelve months of such leave falling due.

29.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 59 of the Western Australian Industrial Gazette at pages 1 to 6 inclusive are hereby incorporated in and shall be deemed to be part of this award.

30.—PROTECTIVE CLOTHING

(1) There shall be made available at the place of work the following items of protective clothing—

- Overalls
- Rubber Boots

(2) Each vehicle used in the collection of bodies shall be equipped with two of each of the following items of protective clothing—

- Dust coats
- Rubber or polythene gloves
- Face masks

31.—BEREAVEMENT LEAVE

A worker shall, on the death within Australia of a wife, husband, de-facto spouse, father, mother, parent-in-law, brother, sister, child or stepchild, be entitled on notice of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the worker in two ordinary working days. Proof of such death to be furnished by the worker to the satisfaction of his/her employer.

Provided that payment in respect of bereavement leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the worker concerned would have been off duty in accordance with his/her shift roster, or on long service leave, annual leave, sick leave, worker's compensation, leave without pay or on a public holiday.

A worker shall not be entitled to claim payment for bereavement leave on a day when that worker is absent on an Accrued Day Off in accordance with the provisions of subclauses (1) and (2) of Clause 6.—Hours of this award.

A worker, whilst on bereavement leave prescribed by this clause shall continue to accrued an entitlement to an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6.—Hours of this award.

32.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave.

A worker who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause—

(a) A worker shall include a part-time worker but shall not include a worker engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave.

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) A worker shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(c) A worker shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) A worker shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job.

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the worker make it inadvisable for the worker to continue at her present work, the worker shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the worker may, or the employer may require the worker to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave.

(a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave.

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a worker terminates other than by the birth of a living child.

(b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be right of the worker to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the worker to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave.

(a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or

(ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where a worker not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) A worker returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements.

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks.

(a) A worker may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to a worker during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment.

Notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of a worker but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment.

(a) A worker on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of a worker on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave.

- (a) A worker shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) A worker, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Workers.

- (a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on maternity leave.
- (b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.
- (c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the worker who is being replaced.
- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.
- (e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve months' qualifying period.

(12) Effect of Maternity Leave on Accrued Day Off

- (a) When a worker proceeds on maternity leave there will be no accrual towards an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6.—Hours of this award.
- (b) When a worker proceeds on maternity leave the employer may pay a worker the amount of hours accrued towards an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6.—Hours of this award.

33.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK \$
Agnew	14.80
Argyle (see subclause (12))	38.50
Balladonia	14.60
Barrow Island	25.10
Boulder	6.10
Broome	23.60
Bullfinch	7.00
Carnarvon	12.00
Cockatoo Island	25.90
Coolgardie	6.10
Cue	15.10
Dampier	20.40
Denham	12.00
Derby	24.50
Esperance	4.50
Eucla	16.50
Exmouth	21.10
Fitzroy Crossing	29.60
Goldsworthy	13.50

TOWN

PER WEEK

TOWN	PER WEEK \$
Halls Creek	33.70
Kalbarri	5.00
Kalgoorlie	6.10
Kambalda	6.10
Karratha	24.20
Koolan Island	25.90
Koolyanobbing	7.00
Kununurra	38.50
Laverton	15.00
Learmonth	21.10
Leinster	14.80
Leonora	15.00
Madura	15.60
Marble Bar	36.70
Meekatharra	13.00
Mt Magnet	16.10
Mundrabilla	16.10
Newman	14.20
Norseman	12.50
Nullagine	36.60
Onslow	25.10
Pannawonica	19.10
Paraburdoo	19.00
Port Hedland	20.30
Ravensthorpe	7.90
Roebourne	27.80
Sandstone	14.80
Shark Bay	12.00
Shay Gap	13.50
Southern Cross	7.00
Telfer	34.10
Teutonic Bore	14.80
Tom Price	19.00
Whim Creek	24.00
Wickham	23.40
Wiluna	15.10
Wittenoom	32.50
Wyndham	36.40

(2) Except as provided in subclause (3) of this clause, an employee who has—

- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee—

- (a) is provided with board and lodging by his/her employer, free of charge;
- or
- (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an Order or Agreement made pursuant to the Act;

such employee shall be paid $66\frac{2}{3}$ per cent of the allowances prescribed in subclause (1) of this clause.

The provisions of paragraph (b) of this subclause shall have effect on and from the 24th day of July, 1990.

(4) Except where an employee is eligible for payment of an additional allowance under subclause (2) of this clause, but on 31 December 1987 was in receipt of an amount in excess of that under General Order 603 of 1987, that employee shall continue to receive the allowance at the higher rate until 1 July 1988 when the difference between the rate being paid and that due under subclause (2) of this clause shall be reduced by $33\frac{1}{3}\%$; the difference remaining on 1 January 1989 shall be reduced by 50% from that date and payment in accordance with subclause (2) of this clause will be implemented on 1 July 1989.

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for

ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(8) For the purposes of this clause—

(a) “Dependant” shall mean—

- (i) a spouse or defacto spouse; or
- (ii) a child where there is no spouse or defacto spouse;

who does not receive a district or location allowance, but shall exclude a dependant whose salary/wage package includes a consideration of the purposes for which the location allowance is payable pursuant to the provisions of this clause.

(b) “Partial Dependant” shall mean a “dependant” as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any ‘district allowance’ payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

34.—EFFECT OF 38-HOUR WEEK

(1) Termination

- (a) A worker subject to the provisions of subclause (1) of Clause 6—Hours of this award who has not taken any Accrued Day(s) Off accumulated during a work cycle in which employment is terminated, shall be paid the total of hours accumulated towards the Accrued Day(s) Off for which payment has not already been made.
- (b) A worker who has taken any Accrued Day Off during a work cycle in which employment is terminated shall have the wages due on termination reduced by the total hours for which payment has already been made but for which the worker had no entitlement toward those Accrued Day(s) Off.

(2) Workers’ Compensation

- (a) 20 Day Work Cycle
 - (i) Where a worker is on workers’ compensation for periods for less than one complete 20 day work cycle, such worker will accrue towards and be paid for the succeeding Accrued Day Off following such absence.

- (ii) A worker will not accrue Accrued Day(s) Off for periods of workers’ compensation where such period of leave exceeds one or more complete 20 day work cycles.

- (iii) Where a worker is on workers’ compensation for less than one complete 20 day work cycle and an Accrued Day Off falls within the period, the worker will not be re-rostered for an additional Accrued Day Off.

(b) 12 Months’ Work Cycle

- (i) Where a worker is on workers’ compensation for period for less than a total of 20 consecutive work days in a work cycles such worker will accrue towards and be paid for the succeeding Accrued Day(s) Off following such leave.
- (ii) Where a worker is on workers’ compensation for periods greater than a total of 20 consecutive days in a work cycles such worker will have the period of workers’ compensation added to the work cycle.

(3) Leave Without Pay

(a) 20 Day Work Cycle

A worker who is absent on any form of leave without pay during a 20 day work cycle shall no accumulate an entitlement to an Accrued Day Off for the period of such leave nor will the worker be entitled to an Accrued Day Off whilst on leave without pay.

(b) 12 Months’ Work Cycle

- (i) A worker who is absent on any form of leave without pay for less than a total of five days in any work cycle shall not have payment reduced when proceeding on Accrued Day(s) Off.
- (ii) A worker who is absent on any form of leave without pay for a total of five days or more in any work cycle will have such period of leave added to the work cycle.
- (iii) Where a worker is on workers’ compensation for greater than 20 consecutive work days and an Accrued Day Off as prescribed in Subclause (1) of Clause 6—Hours of this award falls within the period the worker shall be re-rostered for another Accrued Day Off on completion of the 20 day work cycle following such absence.

35.—PART-TIME WORKERS

(1) A part-time worker may be engaged on a weekly contract to work a regularly rostered number of hours each week. Provided that a part-time worker shall not be rostered to work less than two days per week.

(2) A part-time worker shall be paid a weekly rate calculated pro rata to the class of work on which the worker is engaged in the proportion which the worker’s hours of work bear to 38.

(3) Part-time workers shall be entitled to payment for annual leave, public holidays and sick leave on a pro rata basis in the same proportion as the number of hours worked per week bears to 38.

(4) The hours of part-time workers shall not be altered without their agreement or the giving of one week’s notice of the change of rostered hours.

36.—SHIFT WORK

(1) By mutual agreement full-time workers may be engaged on an afternoon shift between Monday and Friday each week.

(2) “Afternoon Shift” means a shift which commences at or after 12 noon and which finishes at or prior to 9.00 p.m.

(3) Where less than five consecutive afternoon shifts are worked workers so engaged shall be paid at overtime rates for each afternoon shift worked.

(4) The loading on the ordinary rates of pay for afternoon shift shall be 15 per cent.

37.—SUPERANNUATION

(1) Term

This Clause shall remain in force for a period of two years from the date hereof.

(2) Employer Contributions

- (a) The employer shall contribute 3% of ordinary time earnings per eligible employee into Westscheme.
- (b) For employees who were receiving employer contributions as at 1st March 1989, into other than an approved fund, the employer shall not be obliged to pay more than 3% into any pre-existing fund in addition to contributing 3% of ordinary time earnings into Westscheme.
- (c) Employer contributions shall be paid on a monthly basis for each week of service that the eligible employee completes with the employer. Provided that the employer shall not be required to make contributions for any portion of the qualifying periods referred to in subclause (4) of this Clause.
- (d) No contributions shall be made for periods of unpaid leave, or unauthorised absences in excess of one week or for annual leave or long service leave payments made on termination.

(3) Definitions

“Approved Fund” shall mean a fund which has been established by and on behalf of the employer for the purposes of Occupational Superannuation and which complies with the Australian Government’s Operational Standards for Occupational Superannuation.

“Ordinary time earnings” shall mean the salary, wage or other remuneration periodically received by the employee in respect of the time worked in ordinary hours and shall include shift work penalties in the case of the employee being a shift worker, payments which are made for the purpose of District or Location Allowances or any other rate paid for all purposes of the award to which the employee is entitled for ordinary hours of work PROVIDED THAT “ordinary time earnings” shall not include any payment which is of a similar nature to or is paid for the same reasons as or is paid in lieu of payments for overtime, disability payments, vehicle allowances, fares or travelling time allowances (including payments made for travelling related to distant work), commission or bonus.

(4) Qualifying Period

- (a) Full-time and part-time employees shall serve a qualifying period of three calendar months’ continuous service with the employer before becoming entitled to the employer contributions mentioned in subclause (2) of this Clause.
- (b) Casual employees shall not be entitled to receive the employer contributions mentioned in subclause (2) of this Clause until the employee has been employed for more than 243 hours in any three-month period.

(5) Exemptions

- (a) Employers or employees who are covered by a Superannuation Award or Agreement made pursuant to the Industrial Relations Act 1979 shall be exempted from the provisions of this Clause.
- (b) The employers set out hereunder who provide superannuation under an Approved Company Fund to employees shall, in respect of those employees, and by agreement with the Union, pay the contributions specified in paragraph (a) of subclause (2) of this Clause to such Approved Company Fund—
Mead Son & Co. (1978) Pty Ltd
Arthur J. Purslowe Pty Ltd
- (c) An employer may make application to the Western Australian Industrial Relations Commission for an exemption from this Clause where that employer already provides their employees with Occupational Superannuation into an Approved Fund.

(6) Operative Date

This Clause shall operate from 1st March, 1989.

38.—AWARD MODERNISATION AND ENTERPRISE CONSULTATION

(1) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of the industry to enhance the career opportunities and job security of employees in the industry.

(2) At each plant or enterprise a consultative mechanism may be established by the employer, or shall be established upon request by the employees or their Union. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of that plant or enterprise.

(3) Where a consultative committee is established, it will be free to address any matter which is consistent with the objectives of subclause (1) of this clause.

(4) Discussions that take place will have regard to the following requirements—

- (a) the changes sought shall not affect provisions reflecting State standards;
- (b) the majority of employees affected by the change at the plant or enterprise must genuinely agree to the change;
- (c) any agreement shall not, in the context of a total package, provide for a set of conditions of a lesser standard than that provided by the award and no employee shall have a lesser income as a result of the conditions provided for in such agreement;
- (d) the Union must be a party to any agreement which affects the wages and/or conditions of employment of employees;
- (e) the Union shall not unreasonably oppose any agreement;
- (f) any agreement relating to award matters shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a schedule to this award and take precedence over any provision of this award to the extent of any inconsistency;
- (g) if agreement cannot be reached on a particular issue, then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

- (a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.
- (b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
(ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award—

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

SCHEDULE B—RESPONDENTS

Bowra & O'Dea Pty Ltd,
68 Stirling Street,
PERTH WA 6000

Donald J. Chipper & Son Pty Ltd,
385 Rokeby Road,
SUBIACO WA 6008

Arthur E. Davies & Co. Pty Ltd,
85 Market Street,
FREMANTLE WA 6061

Mead Son & Co. Pty Ltd,
190 Albany Highway,
VICTORIA PARK WA 6100

Arthur J. Purslowe & Co. Pty Ltd,
15 Scarborough Beach Road,
NORTH PERTH WA 6006

Prosser Scott & Co. Pty Ltd,
357 Hay Street,
SUBIACO WA 6008

W. Snell & Co.,
1 Marion Street,
MIDLAND WA 6056

Monahan's Funeral Services,
231 Grand Promenade,
DIANELLA WA 6062

William Barrett & Sons,
9 Spencer Street,
BUNBURY WA 6230

C.E. Courtis & Sons,
21 Richardson Street,
KATANNING WA 6317

S.C. Doyle,
(no longer in business)

A. Dawson & Son,
19 Egerton Street,
NARROGIN WA 6312

R. Falkingham,
Kent Street,
BUSSELTON WA 6280

Geraldton Funeral Service,
(no longer in business)

W.R. Jones,
Mount Barker WA 6324

Wm. James & Sons,
(no longer in business)

M. James,
(no longer in business)

J. Keenan,
27 Steere Street,
COLLIE WA 6225

L.A. Miller,
(no longer in business)

William Moyes & Sons,
(no longer in business)

H.C. Prior & Son,
69 Grey Street,
ALBANY WA 6330

J.W. Purslowe & Son,
264 Fitzgerald Street,
NORTHAM WA 6401

W. Strother,
(no longer in business)

Ivan Vulkovich,
46 Cassidy Street,
KALGOORLIE WA 6430

Dated at Perth this 11th day of June, 1964.

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award / industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

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**INDEPENDENT SCHOOLS (BOARDING HOUSE)
SUPERVISORY STAFF AWARD.
No. 9 of 1990.**

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 2nd day of September 1997.

J. SPURLING,
Registrar.

—————

Independent Schools (Boarding House) Supervisory Staff
Award

1.—TITLE

This award shall be known as the Independent Schools (Boarding House) Supervisory Staff Award.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August 1996 including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
3. Area
4. Scope
5. Definitions
6. Contract of Service
7. Hours of Duty
8. Rosters
9. Part Time Employees
10. Meals
11. Salaries
12. Holiday and Vacation Leave
13. Long Service Leave
14. Sick Leave
15. Bereavement Leave
16. Maternity Leave
17. Travelling Allowances
18. Lodging Conditions
19. General Conditions
20. Salary Record
21. No Reduction
22. Location Allowances
23. Higher Duties
24. Superannuation
25. Consultative Provisions
- Appendix—Resolution of Disputes Requirement
- Schedule A—Parties
- Appendix—S.49B—Inspection Of Records Requirements

3.—AREA

This award shall apply to the whole of the State of Western Australia.

4.—SCOPE

This award applies to Independent Schools with boarding houses and their employees who directly supervise or who are responsible for the supervision of, the educational, recreational and personal general welfare of students in or about a

boarding house and shall include those supervisory duties outside a boarding house that are from time to time directed by the employer, but shall not include those persons employed as cleaners, caretakers, kitchen and canteen staff, laundry staff, nursing staff, grounds staff, and those employees primarily employed as teachers or to a member of a religious order unless it is so stated in a written contract of employment between that person and the employer.

5.—DEFINITIONS

(1) “Houseparent”—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) “Part Time Supervisor”—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) “Relief Supervisor”—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) “Senior Supervisor”—shall mean any employee who is responsible for the overall supervision of the boarding school.

(5) “Shift”—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) “Supervisor”—shall mean an employee who is employed to supervise in accordance with Clause 4.—Scope, of this award.

(7) “Union”—shall mean The Independent Schools Salaried Officers’ Association of Western Australia, Industrial Union of Workers.

6.—CONTRACT OF SERVICE

(1) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of the appointment are stated.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this award.

(3) Except in the case of relief supervisors the termination of the service of an employee shall require a minimum of two weeks’ notice by either party. Failure to give the required notice shall make that party liable to forfeiture of payment to the other party of an amount equivalent to two weeks’ pay or an amount equivalent to that period of notice not given or served.

(4) The engagement of a relief supervisor shall be by the shift and where the period exceeds five consecutive shifts as rostered, the notice of termination required shall be one day. Where the employment is for five consecutive shifts or less, as rostered, the notice of termination shall not be required.

(5) Nothing in this clause shall prevent the employer from dismissing any employee summarily for gross misconduct; in which case the employee shall be paid all entitlements up to the time of dismissal only.

(6) Except by written approval of the employer to do otherwise, an employee provided with accommodation by the employer, shall be required to vacate such accommodation on the date employment ceases and at other times indicated in the employee’s letter of appointment. Where notice is not given pursuant to this clause, adequate time shall be available to the employee to vacate such accommodation.

7.—HOURS OF DUTY

(1) Subject to this award, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

8.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- (a) the name of the employee/s;

(b) the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;

(c) the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2), the employer may change the roster provided that not less than twelve hours notice of such change is given to any employee so affected.

9.—PART TIME EMPLOYEES

(1) Notwithstanding anything contained in this award, a part time employee may be employed for less hours per week than are usually worked in the boarding house by a full time employee.

(2) A part time employee shall be paid salary and receive payment for vacation leave, sick leave and long service leave, at a rate in proportion that the employee's hours bear to the usual full time hours per week at that boarding house.

10.—MEALS

An employee rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

11.—SALARIES

(1) The minimum annual rate of salary payable to employees shall be as follows—

(a) Supervisor—

	Minimum Salary \$ per Annum	1st and 2nd \$8 per week Safety Net Adjustment \$ per Annum	3rd \$8 per week Safety Net Adjustment \$ per Annum	Total Salary \$ per Annum
1st year of experience	18,706	834	417	19,957
2nd year of experience	19,475	834	417	20,726
3rd year of experience	20,500	834	417	21,751
4th year of experience	21,525	834	417	22,776
5th year of experience	22,550	834	417	23,801
6th year of experience	23,575	834	417	24,826

(b) Senior Supervisor—

	Minimum Salary \$ per Annum	1st and 2nd \$8 per week Safety Net Adjustment \$ per Annum	3rd \$8 per week Safety Net Adjustment \$ per Annum	Total Salary \$ per Annum
1st year of experience	25,113	834	417	26,364
Thereafter	26,650	834	417	27,901

(c) Relief Supervisor—

(i) A relief supervisor shall be paid per rostered shift at a rate calculated at step 6 of paragraph (a) of this subclause, divided by 260.

(ii) A relief houseparent shall be paid per rostered shift at a rate calculated at step 5 of paragraph (a) of this subclause, divided by 260.

(d) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(e) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety adjustments.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the

employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

12.—HOLIDAY AND VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deduction of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) Any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this award, shall not count for the purpose of determining the right to vacation leave.

(5) (a) A leave loading equivalent to 17.5 per cent of four weeks' salary shall be paid to an employee, including a part time employee, who has completed twelve months' continuous service with the employer or who has been employed for all school terms in a calendar year.

(b) The loading shall be paid in the final pay in December of that year.

(c) If the service of an employee commences after the beginning of first term in a calendar year then by agreement between the employer and the employee, the loading may be paid, proportionate to the length of service in that year, in December of that year.

(6) (a) Provided that and subject to (b) of this subclause, in lieu of the provisions of subclause (1) hereof, a Houseparent shall be entitled to a minimum of four weeks paid vacation leave after each period of 12 months' service.

(b) Any employee who as at 31 May 1994 who was being paid throughout school vacation periods shall not have that benefit reduced.

13.—LONG SERVICE LEAVE

(1) Except as provided in subclause (2) of this clause, the Long Service Leave provisions, set out in Volume 71 of the Western Australian Industrial Gazette at pages 1 to 4 inclusive, are hereby incorporated in and shall be deemed to be part of this award.

(2) Notwithstanding the provisions of subclause (1) of this clause, the provisions for long service leave may be set by agreement between the employer, the employee and the union; provided that such agreement shall not set provisions less favourable than those prescribed for under subclause (1) hereof.

14.—SICK LEAVE

(1) An employee who is unable to attend or remain at the place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with this clause.

(2) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer.

(3) If in the first or successive years of service with the employer, an employee is absent on the grounds of personal ill health or injury for a period longer than the employee's entitlement to paid sick leave, payment may be adjusted at the end of that year of service, (or at the time the employee's services terminate if before the end of that year of service) to the extent

that the employee has become entitled to further paid sick leave during that year of service.

(4) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which the entitlement has accrued during the year at the time of the absence; provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(5) To be entitled to payment in accordance with this clause, the employee shall as soon as is reasonably practicable advise the employer of the inability to attend for work, the nature of the illness or injury and the estimated duration of the absence; provided that such advice shall be given to the employer within 24 hours of the commencement of the absence unless good reason prevents the employee from so doing.

(6) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated for the time of the absence or who fails to supply such other proof of the illness or injury as the employer shall reasonably require; provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.

(7) The provisions of this clause with respect to payment do not apply to an employee who is entitled to payment under the Workers' Compensation and Assistance Act 1981 nor to an employee whose injury or illness is the result of the employee's own misconduct.

(8) For the purposes of this clause all time during term vacation periods when the employee is not required to attend for work shall count as service.

(9) The provisions of this clause shall not apply to an employee who is engaged as a relief supervisor.

15.—BEREAVEMENT LEAVE

An employee shall, on the death within Australia of a spouse, de-facto spouse, parent, parent-in-law, brother, sister, child or stepchild be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

16.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause—

- (a) An employee shall include a part time employee but shall not include an employee engaged in a relief capacity.
 - (b) Maternity leave shall mean unpaid maternity leave.
- (2) Period of Leave and Commencement of Leave
- (a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

- (b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

- (c) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

- (d) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave. If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

- (a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving no less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

- (b) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

- (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

- (b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

- (a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

- (i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work; or
- (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

- (b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

- (c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

- (d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause

shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer. Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks.

- (a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.
- (b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the award.

(9) Termination of Employment

- (a) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

- (a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (b) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where

her employment continues beyond the 12 months' qualifying period.

17.—TRAVELLING ALLOWANCES

(1) Where an employee is required by the employer, to work away from the employee's usual place of employment the employer shall pay the employee any reasonable travelling expenses incurred except where an allowance is paid in accordance with subclause (2) hereof.

(2) Where an employee is required and authorised to use the employee's own motor vehicle in the course of duty the employee shall be paid an allowance not less than that provided for in the relevant public service motor vehicle allowance award, as amended from time to time.

18.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) An employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

19.—GENERAL CONDITIONS

The employer shall make provision for the following—

- (1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.
- (2) Access by employees to telephone facilities for emergency use.
- (3) Access by authorised employees to proper records or information concerning boarders taking medication or who are subject to allergies.
- (4) Access by authorised employees to information regarding procedures for obtaining medical assistance.
- (5) Written authority for employees responsible for the distribution of any medication required to be taken by a student in the boarding house.

20.—SALARY RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Full name and residential address of each employee.
- (b) The starting and finishing times and the hours worked each day and each week.
- (c) The salary paid each week.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

21.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary of any employee who at 1 January 1991 was being paid a higher rate than the minimum prescribed for the employee's classification at that time.

22.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK \$
Agnew	14.80
Argyle (see subclause (12))	38.50
Balladonia	14.60
Barrow Island	25.10
Boulder	6.10
Broome	23.60
Bullfinch	7.00
Carnarvon	12.00
Cockatoo Island	25.90

TOWN	PER WEEK \$
Coolgardie	6.10
Cue	15.10
Dampier	20.40
Denham	12.00
Derby	24.50
Esperance	4.50
Eucla	16.50
Exmouth	21.10
Fitzroy Crossing	29.60
Goldsworthy	13.50
Halls Creek	33.70
Kalbarri	5.00
Kalgoorlie	6.10
Kambalda	6.10
Karratha	24.20
Koolan Island	25.90
Koolyanobbing	7.00
Kununurra	38.50
Laverton	15.00
Learmonth	21.10
Leinster	14.80
Leonora	15.00
Madura	15.60
Marble Bar	36.70
Meekatharra	13.00
Mt Magnet	16.10
Mundrabilla	16.10
Newman	14.20
Norseman	12.50
Nullagine	36.60
Onslow	25.10
Pannawonica	19.10
Paraburdoo	19.00
Port Hedland	20.30
Ravensthorpe	7.90
Roebourne	27.80
Sandstone	14.80
Shark Bay	12.00
Shay Gap	13.50
Southern Cross	7.00
Telfer	34.10
Teutonic Bore	14.80
Tom Price	19.00
Whim Creek	24.00
Wickham	23.40
Wiluna	15.10
Wittenoom	32.50
Wyndham	36.40

(2) Except as provided in subclause (3) of this clause, an employee who has—

- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee—

- (a) is provided with board and lodging by his/her employer, free of charge;
- or
- (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an Order or Agreement made pursuant to the Act;

such employee shall be paid $66\frac{2}{3}$ per cent of the allowances prescribed in subclause (1) of this clause.

The provisions of paragraph (b) of this subclause shall have effect on and from the 24th day of July, 1990.

(4) Except where an employee is eligible for payment of an additional allowance under subclause (2) of this clause, but on 31 December 1987 was in receipt of an amount in excess of that under General Order 603 of 1987, that employee shall continue to receive the allowance at the higher rate until 1 July 1988 when the difference between the rate being paid and that due under subclause (2) of this clause shall be reduced by

$33\frac{1}{3}$ %; the difference remaining on 1 January 1989 shall be reduced by 50% from that date and payment in accordance with subclause (2) of this clause will be implemented on 1 July 1989.

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(8) For the purposes of this clause—

(a) "Dependant" shall mean—

- (i) a spouse or defacto spouse; or
- (ii) a child where there is no spouse or defacto spouse;

who does not receive a district or location allowance, but shall exclude a dependant whose salary/wage package includes a consideration of the purposes for which the location allowance is payable pursuant to the provisions of this clause.

(b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any 'district allowance' payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

23.—HIGHER DUTIES

An employee employed to relieve a Senior Supervisor shall be paid the first year rate for such classification providing that the period of relief is for not less than 5 consecutive rostered shifts.

24.—SUPERANNUATION

(1) Employer Contributions

- (a) An employer shall make superannuation contributions on behalf of each eligible employee in accordance with any statutory obligation as may

apply from time to time, to one of the following approved superannuation funds—

- (i) CONCEPT ONE—Superannuation Plan which was established and is governed by a Trust Deed and Rules dated 23 September 1986, as amended and;
 - (ii) an exempted fund allowed by subclause (4) of this clause.
- (b) Employer contributions shall be paid on a monthly basis for each week of service that the eligible employee completes with the employer.
- (c) No contributions shall be made for periods of unpaid leave, or, unauthorised absences in excess of ordinary hours or for periods of workers' compensation in excess of 52 weeks. No contributions shall be made in respect to vacation leave paid out on termination or any other payments on termination.
- (2) Fund Membership
- (a) Contributions in accordance with subclause (1)—Employer Contributions of this clause, shall be calculated by the employer on behalf of each employee from the date one month after the employee commences employment, unless the employee fails to return a completed application to join the fund and the employer has complied with the following—
- (i) the employer shall provide the employee with an application to join the fund and documentation explaining the fund within one week of employment commencing.
 - (ii) if the employee fails to return to the employer a completed application to join the fund within two weeks of receipt, the employer shall send to the employee by certified mail, a letter setting out relevant superannuation information, the letter of denial set out in subclause (5) and an application to join the fund.
 - (iii) where the employee completes and returns the letter of denial no contribution need be made on that employee's behalf.
 - (iv) where the employee completes and returns neither the application to join the fund nor the letter of denial within one week of postage, the employer shall advise either the union or the fund administrator in writing of the employee's failure to return the completed form.
 - (v) from two weeks following the employer's advice pursuant to paragraph (iv) should the employee not have returned the completed form the employer shall be under no obligation to make superannuation payments on behalf of the employee.
- Provided that if at any time an employee returns a signed application form, notwithstanding a previous failure to return such form or the return of a letter of denial, the employer shall make contributions on behalf of the employee from the date of return of the signed application form.
- (b) Part time employees shall not be entitled to receive the employer contribution mentioned in subclause (1)—Employer Contributions of this clause unless they work a minimum of 12 hours per week.

(3) Definitions

“Approved Fund” shall mean any fund which complies with the Australian Government's Operational Standards for Occupational Superannuation.

“Ordinary Time Earnings” means the salary or other remuneration regularly received by the employee in respect to the time worked in ordinary hours and shall include payments which are made for the purpose of Location Allowances or any other rate paid for all purposes of the award to which the employee is entitled for ordinary hours of work. Provided that “ordinary time earnings” shall not include any payment which is for vehicle allowances, fares or travelling time allowances (including payments made for travelling related to distant work), commission or bonus.

(4) Exemptions

Exemptions from the requirements of this clause shall apply to an employer who at the date of this award—

- (a) was contributing to a superannuation fund, in accordance with an Order of an industrial tribunal; or
- (b) was contributing to a superannuation fund in accordance with an Order or Award of an industrial tribunal, for a majority of employees and makes payment for employees covered by this award in accordance with that Order or Award; or
- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this award where such payments are not made pursuant to an Order of an industrial tribunal;
- (d) was not contributing to a superannuation fund for employees covered by this award; and
 - (i) written notice of the proposed alternative superannuation fund is given to the Union; and
 - (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
 - (iii) within one month of the notice prescribed in paragraph (i) being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(5) Letter of Denial

The letter of denial shall be in the following form—

“To (employer)

I have received an application for membership of the non-contributory superannuation fund and understand—

- (1) that should I sign such form you will make contributions on my behalf; and
- (2) that I am not required to make contributions of my own; and
- (3) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the fund or have contributions made on my behalf.

(Signature)

(Name)

(Address)

(Classification)

(Date)”

25.—CONSULTATIVE PROVISIONS

(1) The parties to this award are committed to award modernisation and to improve the efficiency of the independent school sector in Western Australia.

(2) In order to facilitate the outcomes as determined in subclause (1) of this clause, there shall be established an Independent Schools Consultative Committee with equitable representation of employers and the Union which will provide—

- (a) for the continuation of the award restructuring process as determined, from time to time, by the Western Australian Industrial Relations Commission;
- (b) a forum which will deal with ongoing claims for salary and conditions;
- (c) the means by which positive assistance can be given to: professional development; the quality of education; and the development of the independent school sector.

(3) Liberty to apply is reserved in respect to any amendments, deletions or additions pertaining to the provisions of this clause.

**APPENDIX—RESOLUTION OF DISPUTES
REQUIREMENT**

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

- (a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.
- (b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
- (ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

SCHEDULE A—PARTIES

NAME	ADDRESS
EMPLOYER PARTIES	
Aquinas College	Mt Henry Road MANNING WA 6152
Association of Independent Schools of Western Australia, Union of Employers (Inc.)	3/41 Walters Drive Herdsman Business Park OSBORNE PARK WA 6017
Christ Church Grammar School	Queenslea Drive CLAREMONT WA 6010
Guildford Grammar School	11 Terrace Road GUILDFORD WA 6055
Hale School	Hale Road WEMBLEY DOWNS WA 6019
Iona Presentation College	33 Palmerston Street MOSMAN PARK WA 6012
Keaney College	BINDOON WA 6502
Mazenod College	Gladys Road LESMURDIE WA 6076
Methodist Ladies College	356 Stirling Highway CLAREMONT WA 6010
Perth College	31 Lawley Crescent MOUNT LAWLEY WA 6050
Penrhos College	101 Morrison Street COMO WA 6152
Presbyterian Ladies College (Inc.)	14 McNeil Road PEPPERMINT GROVE WA 6011
Santa Maria College	Moreing Road ATTADALE WA 6156
Scotch College (Inc.)	76 Shenton Road SWANBOURNE WA 6010
St Brigid's College	200 Lesmurdie Road LESMURDIE WA 6076
St Hilda's Anglican School For Girls (Inc)	Bay View Terrace MOSMAN PARK WA 6012
St Mary's Anglican Girls School (Inc)	Elliott Road KARRINYUP WA 6018
The Roman Catholic Archbishop of Perth (Inc.)	Victoria Square PERTH WA 6000
Wesley College	40 Coode Street SOUTH PERTH WA 6151
UNION PARTY	
The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	110 Charles Street WEST PERTH WA 6005

**APPENDIX—S.49B—INSPECTION OF RECORDS
REQUIREMENTS**

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

—————
PUBLIC SERVICE AWARD 1992.
No. PSA A4 of 1989.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 12th day of August, 1997.

J. SPURLING,
Registrar.

—————
Public Service Award 1992
No. PSA A4 of 1989.

1.—TITLE

This Award shall be known as the Public Service Award 1992 and shall supersede and replace the Public Service Salaries Agreement 1985 (PSA AG5 of 1985) and the Public Service General Conditions of Service and Allowances Award (PSA A4 of 1989).

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
- 1A Statement of Principles—August 1996
2. Arrangement
3. Area of Operation
4. Scope
5. Term of Award
6. Definitions
7. Contract of Service
8. Certificate of Service
9. Part Time Employment
- 9A. Casual Employment
10. Salaries
- 10A. Australian Vocational Certificate (AVC) Traineeships
11. Salaries Specified Callings
- 11A. Arbitrated Safety Net Adjustment
12. Annual Increments
13. Payment of Salaries
14. Higher Duties Allowance
15. Deduction of Association Subscriptions
16. Hours
17. Shift Work Allowance
18. Overtime Allowance
19. Annual Leave
20. Public Holidays
21. Long Service Leave
22. Sick Leave
23. Maternity Leave
24. Leave Without Pay
25. Study Leave
26. Short Leave
27. Leave to Attend Association Business
28. Trade Union Training Leave
29. Leave For Training With Defence Force Reserves
30. Camping Allowance
31. District Allowance
32. Disturbance Allowance
33. Diving Allowance
34. Flying Allowance

35. Motor Vehicle Allowance
36. Property Allowance
37. Protective Clothing Allowance
38. Relieving Allowance
39. Removal Allowance
40. Sea Going Allowance
41. Transfer Allowance
42. Travelling Allowance
43. Weekend Absence From Residence
44. Preservation of Rights
45. Time and Salaries Record
46. Notification of Change
47. Right of Entry
48. Copies of Award
49. Establishment of Consultative Mechanisms
50. Award Modernisation
51. Special Conditions
52. Transition
53. Allowances
54. Adjustment of Salaries
55. Amalgamation of Salary Classes
56. Leave for International Sporting Events
57. Witness and Jury Service
58. Liberty to Apply
- Schedule A Salaries
- Schedule B Salaries—Specified Callings
- Schedule C Camping Allowance
- Schedule D District Allowance
- Schedule E Motor Vehicle Allowance
- Schedule F Motor Vehicle Allowance
- Schedule G Motor Cycle Allowance
- Schedule H Overtime
- Schedule I Travelling, Transfer and Relieving Allowance
- Schedule J Shiftwork Allowance
- Schedule K Diving, Flying and Seagoing Allowance
- Schedule L—Named Parties

3.—AREA OF OPERATION

This Award shall apply throughout the State of Western Australia.

4.—SCOPE

(1) This Award shall apply to all public service officers, other than those listed in subclause (2) of this clause, appointed under Part 3 of the Public Sector Management Act 1994 or continuing as such by virtue of clause 4(c) of Schedule 5 of that Act, who are members of or eligible to be members of the Civil Service Association of Western Australia (Inc).

(2) (a) A chief executive officer as defined in section 3(1) of the Public Sector Management Act 1994.

(b) A public service officer whose remuneration payable is determined or recommended pursuant to the Salaries and Allowances Act 1975.

(c) A public service officer whose remuneration is determined by an Act to be at a fixed rate, or is determined or to be determined by the Governor pursuant to the provisions of any Act.

5.—TERM OF AWARD

This Award shall operate as from the first pay period commencing on or after the 1st day of December 1992 and shall remain in force for a period of three years.

6.—DEFINITIONS

In this award, the following expressions shall have the following meaning—

“Administrative Instruction” means administrative instruction published in accordance with Section 19 of the Public Service Act 1978.

“The Association” means the Civil Service Association of Western Australia Incorporated.

“Commissioner” means the Public Service Commissioner appointed under the Public Service Act 1978.

“Headquarters” means the place in which the principal work of an officer is carried out, as defined by the Chief Executive Officer.

“Metropolitan Area” means that area within a radius of fifty (50) kilometres from the Perth City Railway Station.

“Chief Executive Officer” in relation to any officer employed in a Department, means the person immediately responsible for the general management of the department to the Minister of the Crown for the time being administering the department.

“Officer” means an officer as defined by the Public Service Act, 1978.

7.—CONTRACT OF SERVICE

(1) Period of Probation

- (a) Every officer appointed to the Public Service shall normally be on probation for a period not exceeding six months, unless otherwise determined by the chief executive officer.
- (b) An officer who is appointed from the Public Sector of Western Australia, and who has had at least six months of continuous satisfactory service immediately prior to permanent appointment will not be required to serve a period of probation.
- (c) At any time during the period of probation the Commissioner may annul the appointment and terminate the services of the officer by the giving of one weeks notice or payment in lieu thereof.
- (d) Prior to the expiry of the period of probation, the chief executive officer shall—
 - (i) have a report completed in respect to the officer’s level of performance, efficiency, and conduct, and
 - (ii) confirm the permanent appointment, or
 - (iii) extend the period of probation by up to six months (only), to a maximum period of probation of 12 months (only), or
 - (iv) forward the officer’s personal file to the Commissioner with the performance report with a recommendation to either;
 - (a) extend the period of probation beyond 12 months, or
 - (b) terminate the services of the officer.

(2) Discipline

The disciplinary provisions of the Public Service Act 1978 shall apply to every officer employed under that Act.

(3) Termination of Employment

- (a) An officer shall give the chief executive officer written notice of intention to resign of not less than—
 - (i) one month, or
 - (ii) such other period as specified in the officer’s contract of service where applicable.

An officer who fails to give the required written notice forfeits the sum of \$500, unless agreement is reached between an officer and the chief executive officer for a shorter period of notice than that specified.

- (b) Where an officer’s services are terminated for any reason other than dismissal, that officer shall be given written notice of—
 - (i) one month, or
 - (ii) such other period as specified in a contract of service, where applicable.

or payment of salary for the appropriate period in lieu of notice.

- (c) The employment of a casual officer may be terminated at any time by the casual officer or the chief executive officer giving to the other, one hour’s prior notice. In the event of a chief executive officer or casual officer failing to give the required notice, one hour’s salary shall be paid or forfeited.

(4) Retirement

An officer having attained the age of 55 years shall be entitled to retire from the employ of the employer.

(5) Contract Employment

- (a) Notwithstanding the other provisions contained in this clause, the chief executive officer may employ officers on a fixed term contract to the extent of the provisions of the Administrative Instructions.
- (b) Officers appointed for a fixed term shall be advised in writing of the terms of the appointment and such advice shall specify the dates of commencement and termination of employment.
- (c) The provisions of subclause (2) and (3) of this clause shall also apply to officers employed on a fixed term contract.

8.—CERTIFICATE OF SERVICE

On request, the chief executive officer shall issue a Certificate of Service to an officer on retirement or resignation.

9.—PART-TIME EMPLOYMENT

(1) Definitions

- (a) Permanent part-time employment is defined as regular and continuing employment for a minimum of 15 hours per week, and a maximum of 30 hours per week.
- (b) A part-time position shall be one which has discrete functions and responsibilities, but arranged in such a way as to be consistent with job redesign and multiskilling.

(2) Part-Time Agreement

- (a) Each permanent part-time arrangement shall be confirmed in writing and shall include the agreed period of the arrangement, and the agreed hours of duty in accordance with subclause (3) of this clause.
- (b) The conversion of a full-time officer to part-time employment can only implemented with the written consent or by written request of that officer. No officer may be converted to part-time employment without his/her prior agreement.

(3) Hours of Duty

- (a) Except as agreed between employer and union, the parameters for the working of “ordinary hours” shall be 7.00am to 6.00pm.
- (b) The employer shall specify in writing before a part-time officer commences duty, the prescribed weekly and daily hours of duty for the officer including starting and finishing times each day (“ordinary hours”).
- (c) The employer shall give an officer one (1) month’s notice of any proposed variation to that officer’s starting and finishing times and/or particular days worked, provided that the employer shall not vary the officer’s total weekly hours of duty without the officer’s prior written consent, a copy of which shall be sent to the designated officer at the Civil Service Association.
- (d) There may be exceptional reasons for temporary variations to an officer’s working hours. Since the usual reasons for seeking part-time employment are because of other commitments, any variations must be agreed to in writing by the part-time officer.

If agreement is reached to vary an officer’s ordinary working hours pursuant to this subclause—

- (i) Time worked to 7½ hours on any day is not to be regarded as overtime but an extension of the contract hours for that day and should be paid at the normal rate of pay.
- (ii) Overtime shall not be payable unless the total time worked on any day exceeds 8 hours.
- (iii) Additional days worked, up to a total of five days per week, are also regarded as an extension of the contract and should be paid at the normal rate.

(4) Salary and Annual Increments

- (a) An officer who is employed on a part-time basis shall be paid a proportion of the appropriate full-time

salary dependent upon time worked. The salary shall be calculated in the following manner—

Hours worked per fortnight	x	full-time fortnightly salary
75		1

- (b) A part-time officer shall be entitled to annual increments in accordance with Clause 12.—Annual Increments of this Award, subject to meeting the usual performance criteria.

(5) Leave

- (a) A part-time officer shall be entitled to the same leave and conditions prescribed in this award for full time officers.
- (b) Payment to an officer proceeding on accrued annual leave and long service leave shall be calculated on a pro rata basis having regard for any variations to the officer's ordinary working hours during the accrual period.
- (c) Sick leave and any other paid leave shall be paid at the current salary, but only for those hours or days that would normally have been worked had the officer not been on such leave.

(6) Holidays

A part-time employee shall be allowed the prescribed Public Service Holidays without deduction of pay in respect of each holiday which is observed on a day ordinarily worked by the part-time employee.

(7) Right of Reversion of Officers

- (a) Where a full-time officer is permitted, at his or her initiative, to work part-time for a period no greater than 12 months in the position he or she occupied on a full-time basis before becoming part-time, that officer has a right (upon written application) to revert to full-time hours in that position or a position of equal classification as soon as is deemed practicable by the employer, but no later than the expiry of the agreed period.
- (b) A full-time officer who is permitted at his or her initiative to work part-time for a period greater than 12 months in the position he or she occupied on a full-time basis before becoming part-time, may apply to revert to full-time hours in that position but only as soon as is deemed practicable by the employer.

This should not prevent the transfer of said officer to another full-time position at a salary commensurable on that of his or her previous full-time position.

- (c) A part-time officer who was previously a full-time officer within the organisation, who occupies a part-time office which was the initiative of management and who desires to revert to full-time employment will be required to seek promotion or transfer to full-time position by—
- (i) application for advertised vacancies; and/or
 - (ii) by notification in writing to the employer of his or her desire to revert to full-time employment.

- (d) Nothing in paragraph (c) of this subclause shall prevent the employer, with the written consent of the officer, transferring that officer to a full-time position at a level less than the officer's substantive level.

Prior to effecting the transfer of an officer under paragraph (c) of this subclause the employer shall—

- (i) notify the officer of the specific position to which the employer proposes to transfer the officer; and
- (ii) obtain the written consent of the officer to his or transfer to that position.

(8) The number or proportion of part-time officers employed in departments shall not exceed any number or proportion that may be agreed in writing between the Civil Service Association and the Public Service Commissioner.

9A.—CASUAL EMPLOYMENT

(1) Definition

“Casual Officer” means—

- (a) an officer engaged by the hour for a period not exceeding one calendar month in any period of engagement, as determined by the chief executive officer; or
- (b) an officer engaged on a hourly rate of pay and by agreement between the Civil Service Association and the chief executive officer in consultation with the Commissioner.

(2) Salary

- (a) A casual employee shall be paid for each hour worked at the appropriate classification contained in Clause 10.—Salaries or Clause 11.—Salaries Specified Callings of this Award in accordance with the following formula—

Fortnightly Salary

75

with the addition of twenty percent in lieu of annual leave, sick leave, long service leave and payment for public holidays.

- (b) The provisions of subclauses (1) and (4) of Clause 13.—Payment of Salaries of this Award shall not apply to a casual officer.

(3) Conditions of Employment

- (a) Conditions of employment, leave and allowances provided under the provisions of this Award shall not apply to a casual officer. However, where expenses are directly and necessarily incurred by a casual officer in the ordinary performance of his/her duties, he/she shall be entitled to reimbursement in accordance with the provisions of this Award.
- (b) Nothing in this clause shall confer “permanent” or “temporary” officer status within the meaning of the Public Service Act 1978, and no part of a casual officer's service shall count for the purposes of Section 32 of that Act.
- (c) The employment of a casual officer may be terminated at any time by the casual officer or the chief executive officer giving to the other, one hour's prior notice. In the event of a chief executive officer or casual officer failing to give the required notice, one hour's salary shall be paid or forfeited.
- (d) The provisions of the Overtime Allowance in this Award do not apply to Casual Officers who are paid by the hour for each hour worked. Additional hours are paid at the normal casual rate.

10.—SALARIES

(1) Subject to Clause 10A.—Australian Vocational Certificate (AVC) Traineeships the annual salaries applicable to officers not covered by Clause 11.—Salaries Specified Callings of this Award shall be those contained in Schedule A.

(2) An adult officer employed pursuant to Level 1 shall commence employment at Level 1.1. Provided that at the discretion of the Chief Executive Officer, the officer may be appointed to a higher incremental level subject to previous relevant knowledge and experience.

10A.—AUSTRALIAN VOCATIONAL CERTIFICATE (AVC) TRAINEESHIPS

(1) The subject of this clause is to provide the form and substance of the conditions of employment, including rates of pay, applicable to trainees employed under the Commonwealth Government Australian Vocational Certificate (AVC) Training System.

(2) Notwithstanding the provisions of Clause 5.—Term of Award, of this award, this clause shall operate for a period commencing on and from 24 May 1994 and ending on 23 May 1995 at which time it shall be reviewed as to its terms and continued operation.

(3) Training Conditions

- (a) AVC participants shall attend approved on and off the job training prescribed in the relevant training

program, or as notified to the AVC participant by the employer.

- (b) AVC participants shall attend off the job training which is approved by the Public Service Sector Administration Industry Employment and Training Council (PSA IETC) and preferably accredited by the State Skill Accreditation Boards (SSAB).
- (c) On the job training shall be written in approved competency based language and able to be assessed by the supervisor.
- (d) Each training module shall be credentialled so that an AVC participant is able to show prospective employers that they have attained a recognised level of competency.
- (e) AVC participants will receive a mix of supervised work experience, structured training on the job and off the job, and the opportunity to practice new skills in a work environment.
- (f) The employer shall ensure that the AVC participant is permitted to attend the prescribed off the job training and is provided appropriate on the job training.
- (g) The employer shall provide an appropriate level of supervision in accordance with the approved training plan.

(4) Employment Conditions

- (a) AVC participation are to be additional to the normal workforce of the employer, so that AVC participants shall not replace paid workers or volunteers or reduce the hours worked by existing employees.
- (b) Initial placement shall be for a period of twelve months. A longer or shorter period may be required contingent on attainment of required competencies.
- (c) During and at the end of the term of the participant's employment, eligibility for employment as a level one officer will be contingent upon the participant meeting the requirements of the public service recruitment policy.
- (d) Completion of the AVC traineeship scheme will not guarantee the AVC participant future employment in the public service, but the employer will cooperate to assist the AVC participant to be placed in suitable employment, should a position arise.
- (e) AVC participants are permitted to be absent from work without loss of continuity of employment to attend the off the job training in accordance with the training plan. However, except for absences provided for under this award, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of the absence.
- (f) Overtime and shift work shall not be worked by AVC participants except to enable the requirements of the training to be effected. When overtime and shift work are worked the relevant allowances and penalties of the award, based on the training wage stated in subclause (5) of this clause will apply. No AVC participant shall work overtime or shift work on their own.

(5) Wages

- (a) Subject to paragraph (b) of this subclause the award salary applicable to AVC participants covered by Clause 10A shall be \$13,986 (\$268.14 per week). Their award salary takes into account the range and extent of training provided.
- (b) The award salary applicable to AVC participants covered by this clause who are 21 or more years of age shall be the minimum weekly rate of pay specified in the Minimum Conditions of Employment Act 1993, which may be adjusted in accordance with section 14 and section 15 of the Minimum Conditions of Employment Act 1993.

11.—SALARIES SPECIFIED CALLINGS

(1) Officers, who possess a relevant tertiary level qualification, or equivalent determined by the Commissioner, and who are employed in the callings of Agricultural Scientist, Architect, Architectural Graduate, Community Corrections Officer,

Dental Officer, Dietitian, Education Officer, Engineer, Forestry Officer, Geologist, Laboratory Technologist, Land Surveyor, Legal Officer, Librarian, Medical Officer, Medical Scientist, Pharmacist, Planning Officer, Podiatrist, Psychiatrist, Clinical Psychologist, Psychologist, Quantity Surveyor, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Scientific Officer, Social Worker, Superintendent of Education, Therapist (Occupational, Physio or Speech), Veterinary Scientist, or any other professional calling determined by the Commissioner, shall be entitled to annual salaries as contained in Schedule B.

(2) Subject to subclause (5) of this Clause, on appointment or promotion to the Level 2/4 under this clause.

- (a) Officers, who have completed an approved three year tertiary qualification, relevant to their calling, shall commence at the first year increment.
- (b) Officers who have completed an approved four year tertiary qualification, relevant to their calling, shall commence at the second year increment.
- (c) Officers, who have completed an approved Masters or PhD degree relevant to their calling shall commence on the third year increment.

Provided that officers who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(3) The Commissioner shall be exclusively responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this clause and shall maintain a manual setting out such qualifications.

(4) The Commissioner in allocating levels pursuant to subclause (1) of this clause may determine a commencing salary above level 2/4 for a particular calling/s.

(5) The following conditions shall apply to officers in the callings detailed below—

- (a) Education Officers—Officers employed in the calling of Education Officer and appointed or promoted to level 2/4 under this Agreement shall commence on the following salary points—
 - (i) Officers who have completed an approved three year qualification, relevant to their calling, shall commence at the first year of the range, subject to subparagraph (v) of this subclause.
 - (ii) Officers who have completed an approved four year tertiary qualification, relevant to their calling, shall commence at the second year of the range, subject to subparagraph (v) of this subclause.
 - (iii) Officers, who hold a relevant qualification such as an Honours or other four year degree (or equivalent) plus a Diploma of Education, or a relevant Masters degree or PhD, shall commence at the third year of the range subject to subparagraph (v) of this subclause.
 - (iv) Officers, who hold a relevant Masters Degree or PhD plus a Diploma of Education, shall commence at the fourth year of the range, subject to subparagraph (v) of this subclause.
 - (v) Officers, who have not less than two years of relevant experience, shall receive an additional increment at the time of appointment. Where the officer has had three or more years of relevant experience, two additional increments shall be granted at the time of commencement.

(b) Engineers—

- (i) Officers employed in the calling of Engineer and who are classified level 2/4 under this Award shall be paid a minimum salary at the rate prescribed for the maximum of level 2/4 where the officer is an "experienced engineer" as defined.

For the purposes of this paragraph "experienced engineer" shall mean—

- (aa) An engineer appointed to perform professional engineering duties and who is a Corporate Member of the Institution of Engineers, Australia or who attains that status during service.
- (bb) An engineer appointed to perform professional duties who is not a Corporate Member of The Institution of Engineers, Australia but who possesses a degree or diploma from a University, College or Institution acceptable to the Commissioner on the recommendation of the Institution of Engineers, Australia, and who—
 - (A) having graduated in a four or five year degree course at a University or Institution recognised by the Commissioner, has had four years experience on professional engineering duties acceptable to the Commissioner since becoming a qualified engineer, or
 - (B) not having a University degree but possessing a diploma recognised by the Commissioner, has had five years experience on professional engineering duties, recognised by the Commissioner since becoming a qualified engineer.
- (c) Legal Officers—there shall be for the calling of Legal Officer an additional salary point which shall be the salary applicable to Level 9 (maximum) plus a special allowance equivalent to half the difference between Level 9 (maximum) and Class 1.
- (d) Medical Officers and Psychiatrists—there shall be for the callings of Medical Officers and Psychiatrists two additional salary points which may be used. These salary points shall be—
 - (i) The salary applicable to Class 1 plus a Special Allowance equivalent to half the difference between Class 1 and Class 2.
 - (ii) The salary applicable to Class 2 plus a Special Allowance equivalent to half the difference between Class 2 and Class 3.
- (e) Architectural Graduate—Officers employed in the calling of Architectural Graduate, as defined, and appointed or promoted to Level 2/4 shall commence on the following salary points—
 - (i) Officers who have completed an approved five year tertiary qualification, relevant to this calling, shall commence at the second year increment.
 - (ii) Officers who have completed and approved Masters or PHD degree, relevant to this calling, shall commence at the third year increment.

For the purposes of this paragraph "Architectural Graduate" shall mean an officer who possesses a relevant tertiary level qualification or equivalent determined by the Commissioner but is not registered with the Architects Board of Western Australia as an Architect, and who undertakes such duties as are necessary for achieving such registration with the Architects Board of Western Australia.
- (f) Architect—Officers employed in the calling of Architect, as defined, and appointed or promoted to Level 2/4 shall commence at the fourth year increment.

For the purposes of this paragraph "Architect" shall mean an officer who possesses a relevant tertiary level qualification or equivalent determined by the

Commissioner, and possesses the necessary experience and is registered with the Architects Board of Western Australia as an Architect.

11A.—ARBITRATED SAFETY NET ADJUSTMENT

The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

12.—ANNUAL INCREMENTS

An officer shall proceed to the maximum of the officer's salary range by annual increments in accordance with the following provisions—

- (1) Before any increase in salary is paid to an officer who occupies an office which is allocated a range of salary the officer in charge shall, no later than 12 months since the officer's last increment, complete a report in respect of the officer's level of performance, efficiency and conduct and where the Chief Executive Officer is satisfied with the report the increase in salary shall be paid.
- (2) Where the Chief Executive Officer considers the report of the officer in charge to be an adverse report the following provisions shall apply;
 - (a) the report shall be brought to the notice of the officer and shall be initialled by the officer;
 - (b) if the officer desires to give an explanation or give any reasons for disagreeing with the report the officer shall put the explanation or reasons in writing;
 - (c) the Chief Executive Officer shall immediately consider the report and the Officer's explanation or the reasons and may approve the increase in salary or forthwith recommend to the Commissioner that the increase shall not be paid for a specific period;
 - (d) the Commissioner shall forthwith enquire into the matter and may approve, vary or reverse the Chief Executive's recommendation and shall notify the Chief Executive Officer and the officer of the decision within twenty eight clear days of the Chief Executive Officer's recommendation.
- (3) Where an increase is not paid for a specific period, the Chief Executive Officer shall complete a further report before the expiry of that specific period and the provisions of subclauses (1) and (2) of this clause shall apply in respect of that report.
- (4) The non-payment of an increase shall not change the normal anniversary date of any further increase due to the officer.

13.—PAYMENT OF SALARIES

- (1) Salaries shall be paid fortnightly but, where the usual pay day falls on a Public Service holiday, payment shall be made on the previous working day.
- (2) A fortnight's salary shall be computed by dividing the annual salary by 313 and multiplying the result by 12.
- (3) The hourly rate shall be computed as one seventy-fifth of the fortnight's salary.
- (4) Salaries shall be paid by direct funds transfer to the credit of an account nominated by the officer at a bank, building society or credit union approved by the Under Treasurer or an Accountable Officer.

Provided that where such form of payment is impracticable or where some exceptional circumstances exist, and by agreement between the Commissioner and the Association, payment by cheque may be made.

14.—HIGHER DUTIES ALLOWANCE

(1) An officer who is directed by the Chief Executive Officer to act in an office which is classified higher than the officer's own substantive office and who performs the full duties and accepts the full responsibility of the higher office for a continuous period of five (5) consecutive working days or more, shall, subject to the provisions of this clause, be paid an allowance equal to the difference between the officer's own salary and the salary the officer would receive if the officer was permanently appointed to the office in which the officer is so directed to act.

Provided that where the hours of duty of an officer performing shift work are greater than 7½ hours per day as provided for in paragraph (3)(a) of Clause 17.—Shift Work Allowance of this award the allowance shall be payable after the completion of 37½ consecutive working hours in the higher classified position. This period shall not include any time worked as overtime.

(2) Where the full duties of a higher office are temporarily performed by two (2) or more officers they shall each be paid an allowance as determined by the Chief Executive Officer.

(3) An officer who is directed to act in a higher classified office but who is not required to carry out the full duties of the position and/or accept the full responsibilities, shall be paid such proportion of the allowance provided for in subclause (1) of this clause as the duties and responsibilities performed bear to the full duties and responsibilities of the higher office. Provided that the officer shall be informed, prior to the commencement of acting in the higher classified office, of the duties to be carried out, the responsibilities to be accepted and the allowance to be paid.

The allowance paid may be adjusted during the period of higher duties.

(4) Where an officer who has qualified for payment of higher duties allowance under this clause is required to act in another office or other offices classified higher than the officer's own for periods less than five consecutive working days without any break in acting service, such officer shall be paid a higher duties allowance for such periods: provided that payment shall be made at the highest rate the officer has been paid during the term of continuous acting or at the rate applicable to the office in which the officer is currently acting—whichever is the lesser.

(5) Where an officer is directed to act in an office which has an incremental range of salaries such an officer shall be entitled to receive an increase in the higher duties allowance equivalent to the annual increment the officer would have received had the officer been permanently appointed to such office; provided that acting service with allowances for acting in offices for the same classification or higher than the office during the eighteen (18) months preceding the commencement of such acting shall aggregate as qualifying service towards such an increase in the allowance.

(6) Where an officer who is in receipt of an allowance granted under this clause and has been so for a continuous period of twelve (12) months or more, proceeds on—

- (a) a period of normal annual leave; or
- (b) a period of any other approved leave of absence of not more than four (4) weeks,

the officer shall continue to receive the allowance for the period of leave: provided that this subclause shall also apply to an officer who has been in receipt of an allowance for less than twelve (12) months if during the officer's absence no other officer acts in the office in which the officer was acting immediately prior to proceeding on leave and the officer resumes in the office immediately on return from leave.

For the purpose of this subclause the expression "normal annual leave" shall mean the annual period of recreation leave as referred to in Clause 19.—Annual Leave of this Award and shall include any public service holidays and leave in lieu accrued during the preceding twelve (12) months taken in conjunction with such annual recreation leave.

(7) Where an officer who is in receipt of an allowance granted under this clause proceeds on—

- (a) a period of annual leave in excess of the normal; or
- (b) a period of any other approved leave of absence of more than four (4) weeks,

such officer shall not be entitled to receive payment of such allowance for the whole or any part of the period of such leave.

15.—DEDUCTION OF ASSOCIATION SUBSCRIPTIONS

(1) The Commissioner shall deduct the normal Civil Service Association (Inc) membership subscriptions as equal amounts each pay period from the salary of officers who are members of the Association in accordance with each Payroll Deduction Authority form.

(2) Payroll Deduction Authority forms shall be completed by officers. Where the Commissioner requests a standard procurement form, that form shall be used.

(3) Where required by the Commission or Association, the Association General Secretary or person acting in the General Secretary's stead, shall countersign all forms and forward them to the officer's paymaster.

(4) (a) The Commissioner shall commence deduction of subscriptions from the first full pay period following receipt of a completed Payroll Deduction Authority form and continue deducting throughout the officer's period of employment, except as provided in subclause (5) of this clause or until the Payroll Deduction Authority is cancelled in writing by the officer.

(b) Where the Payroll Deduction Authority form authorises the Commissioner to deduct Association subscriptions in accordance with the rules of the Association the Association shall notify the Commission in writing of the level of Association subscription to be deducted. The Commission shall implement any change to the Association subscriptions no later than one month after being notified by the Association except where the Association nominates a later date.

(5) (a) The collection of any nomination fee, arrears, levies or fines is not the responsibility of the Commissioner.

(b) Where a deduction is not made from an officer in any pay period, either inadvertently or as a result of an officer not being entitled to salary sufficient to cover the subscription it shall be the officer's responsibility to settle the outstanding amount with the Commissioner direct.

(6) The Commissioner shall not make any deduction of subscriptions from an officer's termination pay on termination of service, other than normal deductions for the preceding pay period.

(7) The Commission shall forward contributions deducted together with supporting documentation, to the Association at such intervals as are agreed between the Commission and the Association.

16.—HOURS

(1) Prescribed Hours of Duty

Prescribed hours of duty to be observed by officers shall be seven hours thirty minutes per day to be worked between 7.00 am and 6.00 pm Monday to Friday as determined by the chief executive officer with a lunch interval of forty-five minutes to be taken between 12.00 noon and 2.00 pm. Subject to the lunch interval prescribed hours are to be worked as one continuous period.

Chief executive officers wishing to vary the prescribed hours of duty to be observed shall be required to give one month's notice in writing to the department, branch, section or officers to be affected by the change.

(2) Other Working Arrangements

(a) The chief executive officer may vary the prescribed hours of duty observed in the department or any branch or section thereof so as to make provisions for—

- (i) the attendance of officers for duty on a Saturday, Sunday, Public Holiday or on a Public Service Holiday.

- (ii) the performance of shift work including work on Saturdays, Sundays, Public Holidays or on a Public Service Holiday; and
- (iii) the nature of the duties of an officer or class of officers in fulfilling the responsibilities of their office.

provided that where the hours of duty are so varied an officer shall not be required to work more than five hours continuously without a break.

- (b) Notwithstanding the above, where it is considered necessary to provide a more economic operations, the chief executive officer may authorise the operation of alternative working arrangements in the department, or any branch of section thereof.

The continuing operation of any alternative working arrangements, so approved, will depend on the chief executive officer being satisfied that the efficient functioning of the department is being enhanced by its operation.

Such alternative working arrangements shall be either—

- (i) the operation of flexitime as specified in subclause (3) of this clause, or
- (ii) the operation of a nine day fortnight as specified in subclause (4) of this clause.
- (iii) The operation of permanent part-time employment as specified in Clause 9.—Part Time Employment of this award, or
- (iv) such other arrangement as is approved by the Commissioner.

(3) Flexitime Arrangements

(a) Flexitime Roster

- (i) The authorisation of a flexitime roster shall be the responsibility of the chief executive officer. The roster will indicate the minimum staffing and any other requirements in respect to starting and finishing times, lunch break coverage and flexileave.
- (ii) The roster shall cover a settlement period of four weeks and shall be made available to all affected officers no later than three days prior to the settlement period commencing.
- (iii) The roster shall be prepared in consultation with the affected officers, subject to the chief executive officer retaining the right to determine arrangements to suit the operational needs of the department.
- (iv) Subject to four weeks notice being given to affected officers, the chief executive officer may withdraw authorisation of a flexitime roster.

(b) Hours of Duty

- (i) The prescribed hours of duty may be an average of 7 hours 30 minutes per day which may be worked with flexible commencement and finishing times in accordance with the provisions of this subclause, provided that the required hours of duty for each four week settlement period shall be 150 hours.
- (ii) For the purpose of leave, Public Holidays and Public Service Holidays, a day shall be credited as 7 hours 30 minutes.

(c) Flexitime Periods

Within the constraints of the prepared roster and subject to the concurrence of the supervisor, officers may select their own starting and finishing times within the following periods—

7.30 am to 9.30 am
12.00 noon to 2.00 pm (Minimum half an hour break)
3.30 pm to 6.00 pm

(d) Core Periods

Officers must work in the following core periods unless unavoidably absent due to illness or approved leave.

9.30 am to 12.00 noon
2.00 pm to 3.30 pm

(e) Lunch Break

- (i) An officer shall be allowed to extend the meal break between 12 noon and 2.00 pm of not less than 30 minutes but not exceeding 45 minutes except as provided below.
- (ii) An officer may be allowed to extend the meal break beyond 45 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the officer's supervisor.

(f) Flexileave

- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an officer may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.
- (ii) Approval to take flexileave is subject to the officer having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the chief executive officer, flexileave may be taken before accrual subject to such conditions as the chief executive officer may impose.

(g) Settlement Period

- (i) For recording time worked, there shall be a settlement period which shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 150 hours.

(h) Credit Hours

- (i) Credit hours in excess of the required 150 hours to a maximum of 7 hours 30 minutes are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.
- (ii) Credit hours in excess of 7 hours 30 minutes at the end of a settlement period shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

- (i) Debit hours below the required 150 hours to a maximum of 4 hours are permitted at the end of each settlement period.
Such debit hours shall be carried forward to the next settlement period.
- (ii) For debit hours in excess of 4 hours, officer shall be required to take leave without pay for the period necessary to reduce debit hours to those specified in subparagraph (i)(i) of this subclause.
- (iii) Officers having excessive debit hours may be placed on standard working hours in addition to being required to take leave without pay.

(j) Maximum Daily Working Hours

A maximum of 10 hours may be worked in any one day, assuming a 7.30 am start, 6.00 pm finish and 30 minutes for lunch.

(k) Study Leave

Where study leave has been approved by the chief executive officer pursuant to the provisions of Clause 25.—Study Leave, credits will be given for education commitments falling within the prescribed hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

- (l) Overtime
- (i) Officers receiving at least one day's prior notice of overtime shall be required to work the prescribed hours of duty determined by the chief executive officer under subclause (1)—Prescribed Hours of Duty of this clause.
 - (ii) Where an officer is required to work overtime at the conclusion of a day with less than one day's notice, and
 - (aa) where the officer has at the commencement of that day 2 hours or more flexitime credits, the officer shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or
 - (bb) where that officer has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the officer shall be paid overtime, for time worked after the completion of prescribed hours of duty or after working 7½ hours on that day, whichever is the earlier, or
 - (cc) where that officer has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the officer shall be paid overtime for time worked after 5.30 pm or after working 7½ hours, on that day whichever is the earlier.
 - (iii) Where an officer is required to work overtime at the beginning of a day with less than one day's notice, that officer shall be paid overtime for any time worked prior to the commencing time for prescribed hours of duty determined by the chief executive officer under subclause (1)—Prescribed Hours of duty of this clause.
- (4) Nine Day Fortnight
- (a) Hours of Duty
 - (i) The chief executive officer may authorise the operation of a nine day fortnight where the prescribed hours of duty of 75 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 20 minutes.
 - (ii) The chief executive officer shall determine officers' commencing and finishing times between the spread of 7.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.
 - (b) Lunch Break
 - (i) Officers shall be allowed forty five minutes for a meal break between 12 noon and 2.00 pm to meet departmental requirements.
 - (ii) Such meal breaks shall be arranged so that adequate staff are on duty between 12 noon and 2.00 pm to meet departmental requirements.
 - (c) Special Rostered Day Off

Each officer shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each officer.
 - (d) Leave, Public and Public Service Holidays.

For the purposes of leave, Public Holidays and Public Service Holidays, a day shall be credited as 8 hours 20 minutes notwithstanding the following—

 - (i) When a Public Holiday or a Public Service Holiday falls on an officer's special rostered day off the officer shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.
 - (ii) For a Public Holiday or Public Service Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.
 - (iii) A four week annual leave entitlement is equivalent to 150 hours, the equivalent to eighteen rostered working days of 8 hours 20 minutes, and two special rostered days off.
 - (iv) An officer who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.
 - (e) Overtime

The provisions of Clause 18.—Overtime Allowance of this Award shall apply for work performed prior to an officer's nominated starting time and after an officer's nominated ceasing time in accordance with subparagraph (a)(ii) and on an officer's special rostered day off.
 - (f) Study Leave

Credits for study leave will be given for educational commitments falling due between an officer's nominated starting and finishing times.
- 17.—SHIFT WORK ALLOWANCE
- (1) In this Clause the following expressions shall have the following meaning—
- “Day shift” means a shift commencing after 6.00am and before 12.00 noon.
- “Afternoon shift” means a shift commencing at or after 12.00 noon and before 6.00pm.
- “Night shift” means a shift commencing at or after 6.00pm and before 6.01am.
- “Public holiday” shall mean a holiday provided in Clause 20.—Public Holidays of this Award.
- (2) (a) An officer required to work an afternoon or a night shift of seven and one half (7½) hours shall, in addition to the ordinary rate of salary, be paid an allowance in accordance with Schedule J.—Shift Work Allowance of this award.
- (b) Work performed during ordinary rostered hours on Saturdays or Sundays shall be paid for at the rate of time and one-half and on public service holidays at double time and one-half. These rates shall be paid in lieu of the allowance prescribed in paragraph (2)(a) of this clause.
- Provided that in lieu of the foregoing provisions of this subclause and subject to agreement between the Chief Executive Officer and the officer, work performed during ordinary rostered hours on a public service holiday shall be paid for at the rate of time and one-half and the officer may, in addition, be allowed a day's leave with pay to be added to annual leave or to be taken at some other time within a period of one year.
- (c) An officer rostered off duty on a public service holiday shall be paid at ordinary rates for such day or, subject to agreement between the Chief Executive Officer and the officer, be allowed a day's leave with pay in lieu of the holiday to be added to the officer's next annual leave entitlement or taken at a mutually convenient time within a period of one year.
- (d) An officer engaged on shift work who is rostered to work regularly on Sundays and/or public service holidays shall be entitled to one week's leave in addition to the officer's normal entitlement to annual leave of absence for recreation.
- (e) Additional leave provided by paragraphs (b) and (c) of this subclause shall not be subject to the annual leave loading prescribed by subclause (11) of Clause 19.—Annual Leave of this award.
- (f) Work performed by an officer in excess of the ordinary hours of the officer's shift or on a rostered day off shall be paid for in accordance with the overtime provisions of Clause 18.—Overtime of this award.
- (g) (i) When an officer begins or ceases a shift between the hours of 11.00 pm and 7.00 am and no public transport is available, reimbursement at the appropriate rate of hire prescribed by subclause (4) of Clause 35.—Motor Vehicle Allowance of this Award shall be made if the officer's private motor vehicle

or cycle is used for the journey between the officer's residence and headquarters and the return journey.

Provided however, that any officer who, on or after October 30, 1987, elects to be permanently retained on a fixed or non rotating shift that begins or ceases between or on the hours of 11.00 pm and 7.00 am shall not be eligible to claim this reimbursement.

(ii) The provisions of this subclause shall only be applied to officers living and working within a radius of 50km of the Perth City Railway Station.

(3) Hours of Duty and Rosters

- (a) An officer engaged on shifts shall work a 75 hour fortnight, exclusive of meal intervals, on the basis of not more than ten (10) shifts per fortnight of not more than seven and one half hours duration. Provided that where agreement is reached between the Chief Executive Officer and the Association the length and/or number of shifts worked per fortnight may be altered.

Provided that when the agreed length of a shift is extended past seven and one half hours, overtime shall be payable only for time worked in excess of the rostered shift.

Provided also that whenever an agreed alteration to the number of hours per shift has occurred then the allowance per shift shall be varied on a pro rata basis to reflect any variation to other than seven and one half (7½) hours.

- (b) Meal breaks shall be for a period of at least thirty (30) minutes, but not greater than one hour for each meal.
- (c) Officers may be rostered to work on any of the seven days of the week provided that no officer shall be rostered for more than six (6) consecutive days.
Provided that where agreement is reached between the Chief Executive Officer and the Association, shift workers may be exempted from this provision.
- (d) The roster period shall commence at the beginning of a pay period and continue for fourteen (14) consecutive days. Rosters shall be available to officers at least five (5) clear working days prior to the commencement of the roster.
- (e) A roster may only be altered on account of a contingency which the Chief Executive Officer could not have been reasonably expected to foresee. When a roster is altered, the officer concerned shall be notified of the changed shift 24 hours before the changed shift commences. Provided that where such notice is not given, the officer shall be paid overtime in accordance with Clause 18.—Overtime for the duration of the changed shift. This provision shall not apply to an officer who was absent from duty on the officer's last rostered shift.
- (f) An officer shall not be rostered for duty until at least ten (10) hours have elapsed from the time the officer's previous rostered shift ended. Provided that where agreement is reached between the Association and the Public Service Commission the ten (10) hour break may be reduced to accommodate special shift arrangements, except that under no circumstances shall such an agreement provide for a break of less than 8 hours.
- (g) An officer shall not be retained permanently on one shift unless the officer so elects in writing.
- (h) Officers shall be allowed to exchange shifts or days off with other officers provided the approval of the Chief Executive Officer has been obtained and provided further that any excess hours worked shall not involve the payment of overtime.

18.—OVERTIME ALLOWANCE

(1) For the purposes of this Clause, the following terms shall have the following meanings—

- (a) "Overtime" means all work performed only at the direction of the Chief Executive Officer or a duly authorised officer outside the prescribed hours of duty.

- (b) "Emergency Duty" means: duty by an officer required to return to duty, without prior notice, to meet an emergency at a time that the officer would not ordinarily have been on duty.
- (c) "Prescribed hours of duty" means an officer's normal working hours as prescribed by the Chief Executive Officer in accordance with Clause 16.—Hours, of this Award.
- (d) "Duly authorised officer" means an officer or officers appointed in writing by the Chief Executive Officer for the purpose of authorising overtime.
- (e) "A day" shall mean from midnight to midnight.
- (f) "Public Service Holiday" means the days prescribed as Public Holidays or Public Service Holidays in Clause 20.—Public Holidays of this award.
- (g) "Ordinary travelling time" means time that an officer would have ordinarily spent in travelling once daily from the officer's home to the officer's usual headquarters and home again, by either public transport, or where continuing approval has been given to use a vehicle for official business, by that vehicle.
- (h) "Excess travelling time" means all time travelled on official business outside prescribed hours of duty and away from the officer's usual headquarters in accordance with subclause (7) of this Clause.
- (i) "Fortnightly salary" means an officer's substantive salary exclusive of any allowances such as the district allowance, personal allowance, qualifications allowance, efficiency allowance, service allowance, special allowance, or higher duties allowance unless otherwise approved by the Chief Executive Officer. Provided that a special allowance or higher duties allowance shall be included in "fortnightly salary" when overtime is worked on duties for which these allowances are specifically paid.
- (j) "Commutated overtime" means an agreed allowance negotiated between the Association and the Chief Executive Officer, paid in lieu of actual overtime worked for a group of officers occupying positions which require work to be performed consistently and regularly outside and in excess of the prescribed hours of duty.
- (k) "Out of hours contact" shall include the following—
STANDBY—shall mean a written instruction to an officer to remain at the officer's place of employment during any period outside the officer's normal hours of duty, and to perform certain designated tasks periodically or on an ad hoc basis. Such officer shall be provided with appropriate facilities for sleeping if attendance is overnight, and other personal needs, where practicable.

Other than in extraordinary circumstances, officers shall not be required to perform more than two periods of standby in any rostered week.

This provision shall not replace normal overtime or shift work requirements.

ON CALL—shall mean a written instruction to an officer rostered to remain at the officer's residence or to otherwise be immediately contactable by telephone or paging system outside the officer's normal hours of duty in case of a call out requiring an immediate return to duty.

AVAILABILITY—shall mean a written instruction to an officer to remain contactable, but not necessarily in immediate proximity to a telephone or paging system, outside the officer's normal hours of duty and be available and in a fit state at all such times for recall to duty.

"Availability" will not include situations in which officers carry paging devices or make their telephone numbers available only in the event that they may be needed for casual contact or recall to work. Subject to subclause (3) of this Clause recall to work under such circumstances would constitute emergency duty in accordance with subclause (6) of this Clause.

(2) Overtime

- (a) An officer who works overtime for a greater period than 30 minutes, shall be entitled to payment in accordance with paragraph (d) of this subclause, or time off in lieu of payment in accordance with paragraph (b) of this subclause, or any combination of payment or time off in lieu.

(b) Time off in lieu

- (i) Where the officer or the Chief Executive Officer or the duly authorised officer, so elects in writing prior to overtime being worked, time off in lieu of payment for overtime worked may be taken in accordance with the time ratios in paragraph (d) of this subclause.
- (ii) The officer shall be required to clear accumulated time off in lieu within two months of the overtime being performed, provided that by written agreement between the officer and the Chief Executive Officer, or duly authorised officer, time off in lieu of payment for overtime may be accumulated beyond two months from the time the overtime is performed so as to be taken in conjunction with periods of approved leave.
- (iii) If the department is unable to release the officer to clear such leave within two months of the overtime being performed, and no further agreement prescribed in subparagraph (ii) of this paragraph is reached, then the officer shall be paid for the overtime worked.

(c) Commuted Allowance

Any commuted allowance and/or time off in lieu of overtime, other than that provided in paragraph (b) of this subclause, shall be negotiated between the Association and the Chief Executive Officer.

(d) Payment for Overtime

Payment for overtime shall be calculated on an hourly basis in accordance with the following formula—

(i) Weekdays

For the first three hours worked outside the prescribed hours of duty on any one weekday at the rate of time and one half—

$$\text{i.e. } \frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

After the first three hours on any one weekday at the rate of double time—

$$\text{i.e. } \frac{\text{Fortnightly Salary}}{75} \times \frac{2}{1}$$

(ii) Saturdays

For the first three hours on any Saturday, before 12.00 noon, at the rate of time and one half—

$$\text{i.e. } \frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

After the first three hours or after 12.00 noon, whichever is the earlier, on any Saturday at the rate of double time—

$$\text{i.e. } \frac{\text{Fortnightly Salary}}{75} \times \frac{2}{1}$$

(iii) Sundays

For all hours on any Sunday, at the rate of double time—

$$\text{i.e. } \frac{\text{Fortnightly Salary}}{75} \times \frac{2}{1}$$

(iv) Public Service Holidays

For hours worked during prescribed hours of duty on any Public Service Holiday at the rate

of time and one half (in addition to the normal pay for that day)—

$$\text{i.e. } \frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

For hours worked outside of the prescribed hours of duty on any Public Service Holiday at the rate of double time and a half—

$$\text{i.e. } \frac{\text{Fortnightly Salary}}{75} \times \frac{5}{2}$$

(e) Annual Leave/Long Service Leave

An officer directed to return to duty during periods of annual or long service leave shall be deemed to be no longer on leave for the duration of that period of duty.

- (i) If the officer is directed to return to duty during a period of leave during prescribed hours of duty, then that officer shall be recredited with that leave for the same number of hours of duty performed.
- (ii) If the officer is directed to return to duty during a period of leave outside of prescribed hours of duty, then that officer shall be entitled to payment of overtime in accordance with subclause (2) of this clause.

(f) Time Worked Past Midnight

Where an officer is required to work a continuous period of overtime which extends past midnight into the succeeding day the time worked after midnight shall be included with that worked before midnight for the purpose of calculation of payment provided for in this subclause.

(g) Minimum Periods for Return to Duty

- (i) An officer, having received prior notice, who is required to return to duty—
- (aa) on a Saturday, Sunday or Public Service Holiday, otherwise than during prescribed hours of duty, shall be entitled to payment at the rate in accordance with paragraph (d) of this subclause for a minimum of three hours;
- (bb) before or after the prescribed hours of duty on a weekday shall be entitled to payment at the rate in accordance with paragraph (d) of this subclause for a minimum period of one and one half hours;
- (ii) For the purpose of this subclause, where an officer is required to return to duty more than once, each duty period shall stand alone in respect to the application of minimum period payment except where the second or subsequent return to duty is within any such minimum period.

- (iii) The provisions of this subparagraph shall not apply in cases where it is customary for an officer to return to the place of employment to perform a specific job outside the prescribed hours of duty, or where the overtime is continuous (subject to a meal break) with the completion or commencement of prescribed hours of duty.

(h) Overtime at a Place Other than Usual Headquarters

- (i) When an officer is directed to work overtime at a place other than usual headquarters, and provided that the place where the overtime is to be worked is situated in the area within a radius of fifty (50) kilometres from usual headquarters, and the time spent in travelling to and from that place is in excess of the time which an officer would ordinarily spend in travelling to and from usual headquarters, and provided such travel is undertaken on the same day as the overtime is worked, then such

excess time shall be deemed to form part of the overtime worked.

- (ii) Except as provided in paragraph (e) of subclause (5) and paragraph (b) of subclause (6) of this clause, when an officer is directed to work overtime at a place other than usual headquarters, and provided that the place where the overtime is to be worked is situated outside the area within a radius of fifty(50) kilometres from usual headquarters and the time spent in travelling to and from that place is in excess of the time which the officer would ordinarily spend in travelling to and from usual headquarters, then the officer shall be granted time off in lieu of such excess time spent in actual travel in accordance with subclause (7) Excess Travelling Time of this clause.

(i) Ten Hour Break

- (i) When overtime is worked, a break of not less than ten (10) hours shall be taken between the completion of work on one day and the commencement of work on the next, without loss of salary for ordinary working time occurring during such absence.
- (ii) Provided that where an officer is directed to return to or continue work without the break provided in subparagraph (i) of this paragraph then the officer shall be paid at double the ordinary rate until released from duty, or until the officer has had ten consecutive hours off duty without loss of salary for ordinary working time occurring during such absence.
- (iii) The provisions of subparagraphs (i) and (ii) of this paragraph, shall not apply to officers included in subclause (5) of this clause.

(3) Cases where overtime provisions do not apply

- (a) Except as provided in paragraph (b) of this subclause, payment for overtime, or the granting of time off in lieu of overtime, or travelling time, shall not be approved in the following cases—
- (i) Officers whose maximum salary or maximum salary and allowance in the nature of salary exceeds that as determined for Level 5 as prescribed by Clauses 10.—Salaries and 11.—Salaries Specified Callings of this Award.
- (ii) Officers whose work is not subject to close supervision.
- (b) (i) Where it appears just and reasonable, the Chief Executive Officer may approve the payment of overtime or grant time off in lieu to any officer referred to in paragraph (a) of this subclause.
- (ii) When an officer who is not subject to close supervision is directed by the Chief Executive Officer to carry out specific duties involving the working of overtime, and provided such overtime can be reasonably determined by the officer's supervisor, then such officer shall be entitled to payment or time off in lieu of overtime worked in accordance with paragraphs (2)(d) or (2)(b) of this clause.

(4) Meal Allowances

- (a) A break of 30 minutes shall be made for meals between 5.30 am and 7.30 am, between 12.00 noon and 2.00pm, and between 4.30 pm and 6.30 pm when overtime duty is being performed.
- (b) Except in the case of emergency, an officer shall not be compelled to work more than five hours overtime duty without a meal break. At the conclusion of a meal break, the calculation of the five hour limit recommences.
- (c) An officer required to work overtime of not less than two hours, and who actually purchases a meal shall be reimbursed in accordance with Part 2 of Schedule H.—Overtime of this Award, in addition to any

payment for overtime to which that officer is entitled.

- (d) An officer working a continuous period of overtime who has already purchased one meal during a meal break, shall not be entitled to reimbursement for the purchase of any subsequent meal in accordance with Part 2 of Schedule H.—Overtime, of this Award until that officer has worked a further five hours overtime from the time of the last meal break.
- (e) If an officer, having received prior notification of a requirement to work overtime, is no longer required to work overtime, then the officer shall be entitled, in addition to any other penalty, to reimbursement for a meal previously purchased.
- (5) Out of Hours Contact

- (a) Except as otherwise agreed between the Commissioner and the Association, an officer who is required by the Chief Executive Officer or a duly authorised officer to be on "out of hours contact" during periods off duty shall be paid an allowance in accordance with the following formulae for each hour or part thereof of the officer is on "out of hours contact".

Standby

Level 2 (minimum) weekly rate x $\frac{1}{37.5}$ x $\frac{37.5}{100}$

On Call

Level 2 (minimum) weekly rate x $\frac{1}{37.5}$ x $\frac{18.75}{100}$

Availability

Level 2 (minimum) weekly rate x $\frac{1}{37.5}$ x $\frac{18.75}{100}$ x $\frac{50}{100}$

Such allowances are contained in Part 1 of Schedule H.—Overtime of this Award.

Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is made in accordance with the provisions of subclause (2) of this clause when the officer is recalled to work.

- (b) When an officer is required to be "on call" or "availability" and the means of contact is to be by telephone the Department shall—
- (i) Where the telephone is not already installed, pay the cost of such installation.
- (ii) Where an officer pays or contributes towards the payment of the rental of such telephone, pay the officer 1/52nd of the annual rental paid by the officer for each seven days or part thereof on which an officer is rostered to be "on call" or "availability".
- (iii) Provided that where as a usual feature of the duties an officer is regularly rostered to be on "on call" or "availability", pay the full amount of the telephone rental.
- (c) An officer shall be reimbursed the cost of all telephone calls made on behalf of the employer as a result of being on out of hours contact.
- (d) Where an officer rostered for "on call" or "availability" is recalled to duty during the period for which the officer is on "out of hours contact" then the officer shall receive payment for hours worked in accordance with subclause (2) of this clause.
- (e) Where an officer rostered for "on call" or "availability" is recalled to duty, the time spent travelling to and from the place at which duty is to be performed, shall be included with actual duty for the purposes of overtime payment.
- (f) Minimum payment provisions do not apply to an officer rostered for "out of hours contact" duty.
- (g) An officer in receipt of an "out of hours contact" allowance and who is recalled to duty shall not be regarded as having performed emergency duty in accordance with subclause (6) of this clause.
- (h) Officers subject to this clause shall, where practicable, be periodically relieved from any requirement

to hold themselves on “standby”, “on call” or “availability”.

- (i) No officer shall be on out of hours contact after the last working day preceding a period of annual leave or long service leave.

(6) Emergency Duty

- (a) Where an officer is required to return to duty to meet an emergency at a time when he or she would not ordinarily have been on duty, and no notice of such call was given prior to completion of usual duty on the last day of work prior to the day on which called on duty, then if called to duty—

(i) on a Saturday, Sunday or Public Service Holiday, otherwise than during prescribed hours of duty he/she shall be entitled to payment at the rate in accordance with subclause (2) of this clause for a minimum period of three hours;

(ii) before or after the prescribed hours of duty on a weekday he/she shall be entitled to payment at the rate in accordance with subclause (2) of this clause for a minimum period of two and a half hours.

- (b) Time spent in travelling to and from the place of duty where the officer is actually recalled to perform emergency duty shall be included with actual duty performed for the purpose of overtime payment.

- (c) An officer recalled for emergency duty shall not be obliged to work for the minimum period if the work is completed in less time, provided that an officer called out more than once within any such minimum period shall not be entitled to any further payment for the time worked within that minimum period.

- (d) Where an officer is required to work beyond the minimum period on the first or subsequent recall for emergency duty, the additional time worked at the conclusion of that minimum period shall be paid in accordance with the appropriate rate in subclause (2) of this clause.

- (e) Where an officer is recalled for a second or subsequent period of emergency duty outside of the initial minimum period, the officer shall be entitled to payment for a new minimum period, and the provisions of this subclause shall be re-applied.

- (f) For the purpose of this subclause, no claim for payment shall be allowed in respect of any emergency duty, including travelling time, which amounts to less than 30 minutes.

(7) Excess Travelling Time

An officer eligible for payment of overtime, who is required to travel on official business outside normal working hours and away from usual headquarters shall be granted time off in lieu of such actual time spent in travelling at equivalent or ordinary rates on weekdays and at time and one half rates on Saturdays, Sundays and Public Service Holidays, otherwise than during prescribed hours of duty, provided that—

- (a) such travel is undertaken at the direction of the Chief Executive Officer;

- (b) such travel shall not include—

(i) time spent in travelling by an officer on duty at a temporary headquarters to the officer’s home for weekends for the officer’s own convenience;

(ii) time spent in travelling by plane between the hours of 11.00 pm and 6.00 am;

(iii) time spent in travelling by train between the hours of 11.00 pm and 6.00 am;

(iv) time spent in travelling by ship when meals and accommodation are provided;

(v) time spent in travel resulting from the permanent transfer or promotion of an officer to a new location;

(vi) time of travelling in which an officer is required by the department to drive, outside ordinary hours of duty, a departmental

vehicle or to drive the officer’s own motor vehicle involving the payment of mileage allowance, but such time shall be deemed to be overtime and paid in accordance with subclause (2) of this clause. Passengers, however, are entitled to the provisions of this subclause (7) of this clause;

- (vii) time spent in travelling to and from the place at which overtime or emergency duty is performed, when that travelling time is already included with actual duty time for the payment of overtime.

- (c) Time off in lieu will not be granted for periods of less than 30 minutes.

- (d) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty which is in excess of the officer’s ordinary travelling time.

- (e) Where the urgent need to travel compels an officer to travel during the officer’s usual lunch interval such additional travelling time is not to be taken into account in computing the number of hours of travelling time due.

- (f) In the case of an officer absent from usual headquarters, not involving an overnight stay, the time spent by the officer, outside the prescribed hours of duty, in waiting between the time of arrival at place of duty and the time of commencing duty, and between the time of ceasing duty and the time of departure by the first available transport shall be deemed to be excess travelling time.

- (g) In the case of an officer absent from usual headquarters that does involve an overnight stay, the time spent by the officer, outside the prescribed hours of duty, in waiting between the time of ceasing duty on the last day and the time of departure by the first available transport shall be deemed to be excess travelling time.

(8) Special Conditions

Any group of officers whose duties necessarily entail special conditions of employment shall not be subject to the prescribed hours of duty as defined in Clause 16.—Hours of this Award if the Chief Executive Officer so determines. Provided, however, that such a determination shall not abrogate the right of the Association to make a claim or claims on behalf of such a group.

19.—ANNUAL LEAVE

(1) Definitions—

- (a) Accrued leave—is the leave an officer is entitled to from a previous calendar year.

- (b) Pro-rata leave—is the proportion of leave that an officer is entitled to in the current year, either from the date of commencement, or to the date of cessation.

(2) Entitlement

- (a) Each officer is entitled to four weeks paid leave for each year of service. Annual leave shall be calculated on a calendar year basis commencing on January 1 in each year.

- (b) An officer employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent officer. An officer employed on a fixed term contract for a period less than 12 months, shall be credited with the same entitlement on a pro-rata basis for the period of the contract.

- (c) On written application, an officer shall be paid salary in advance when proceeding on annual leave.

- (d) The provisions of this clause do not apply to Casual Officers.

(3) Pro rata Annual Leave

(a) Entitlement

- (i) An officer who enters the Public Service after January 1 is entitled to pro rata annual leave

for that year, calculated in accordance with the following formula—

Completed Calendar Months of Service	Pro Rata Annual Leave (Working Days)
1	2
2	3
3	5
4	7
5	8
6	10
7	12
8	13
9	15
10	17
11	18

- (ii) Provided that in the first and last months of an officers service the officer is entitled to pro rata annual leave of one working day for each two completed weeks of service.
- (iii) For the purposes of this paragraph, an officer who commences on the first WORKING day of a month and works for the remainder of the month an officer who has worked throughout a month and terminates on the last working day of a month shall be regarded as having completed that calendar month of service.

(b) An officer may take annual leave during the calendar year in which it accrues or anytime thereafter, but the time during which the leave may be taken is subject to the approval of the chief executive officer.

(c) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave, must refund the value of the unearned pro rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an officer.

(4) Part-time entitlement

A part-time officer shall be granted annual leave in accordance with this clause, however payment to a part-time officer proceeding on annual leave shall be calculated having regard for any variations to the officer's ordinary working hours during the accrual period.

(5) Compaction of Annual Leave

An officer who, during an accrual period was subject to variations in ordinary working hours or whose ordinary working hours during the accrual period are less than the officer's ordinary working hours at the time of commencement of annual leave, may elect to take a lesser period of annual leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of annual leave.

(6) Additional leave for the North West

(a) Officers whose headquarters are located north of 26o South Latitude shall receive an additional five working days annual leave on the completion of each year of continuous service in the region.

(b) An officer who proceeds on annual leave before having completed the necessary year of continuous service may be given approval for the additional five working days leave provided the leave is taken at departmental convenience and provided the officer returns to that region to complete the necessary service.

(c) Where an officer has served continuously for at least a year north of the 26o South Latitude, and leaves the region because of promotion or transfer, a pro rata annual leave credit to be cleared at departmental convenience shall be approved on the following basis—

Completed months of continuous service in the region after the initial year's service.	Pro Rata additional annual leave (working days)
1	NIL
2	NIL
3	1

Completed months of continuous service in the region after the initial year's service.

Pro Rata additional annual leave (working days)

4	1
5	2
6	2
7	2
8	3
9	3
10	4
11	4

- (d) Where payment in lieu of pro rata annual leave is made on the death, resignation or retirement of an officer in the region, in addition to the payment calculated on a four week basis, payment may be made for the pro rata entitlement contained in subclause (3) of this clause.

(7) Other Additional Leave

Every officer other than an officer referred to in subclause (6) of this clause, to whom the Commissioner has granted annual leave in excess of four weeks because of special circumstances shall be credited with such additional leave on a pro rata basis according to the following table.

Completed months of Service	Pro rata annual leave (working days)	
	5 additional days	10 additional days
1	nil	nil
2	nil	1
3	1	2
4	1	3
5	2	4
6	2	5
7	2	5
8	3	6
9	3	7
10	4	8
11	4	9

(8) Portability

- (a) Where an officer was, immediately prior to being employed in the Public Service, employed in—

Any Western Australian State body or statutory authority prescribed in Administrative Instruction 611, the chief executive officer shall approve portability of accrued and pro rata annual leave entitlements held at the date the officer ceased that previous employment, provided that—

- (i) the officer's employment with the Public Service commenced no later than one week after ceasing the previous employment; and
- (ii) the officer was not paid out all or part of the accrued and pro rata annual leave entitlements held at the time of ceasing that previous employment.

(9) The chief executive officer may direct an officer to take accrued annual leave and may determine the date on which such leave shall commence. Should the officer not comply with the direction, disciplinary action may be taken against the officer.

(10) Annual Leave Travel Concessions

- (a) Officers stationed in remote areas
 - (i) The travel concessions contained in the following table are provided to officers and their dependents when proceeding on annual leave to either Perth or Geraldton from headquarters situated in District Allowance Areas 3, 5 and 6, and in that portion of Area 4 located north of 30o South latitude.
 - (ii) Officers are required to serve a year in these areas before qualifying for travel concessions. However, officers who have less than a years service in these areas and who are required to proceed on annual leave to suit departmental convenience will be allowed the concessions. The concession may also be given to an officer who proceeds on annual leave before completing the years service provided that the

officer returns to the area to complete the years service at the expiration of the period of leave.

- (iii) The mode of travel is to be at the discretion of the chief executive officer.
- (iv) Travel concessions not utilised within twelve months of becoming due will lapse.
- (v) Part-time officers are entitled to travel concessions on a pro rata basis according to the usual number of hours worked per week.

Travelling time shall be calculated on a pro rata basis according to the number of hours worked.

Approved Mode of Travel	Travel Concession	Travelling Time
(aa) Air	Air fare for the Officer, dependent spouse and dependent children	One day each way
(bb) Road	Full motor vehicle allowance rates, but reimbursement not to exceed the cost of the return air fare for the Officer, dependent spouse and dependent children, travelling in the motor vehicle.	North of 20° South Latitude—two and one half days each way. Remainder - two days each way.
(cc) Air and Road	Full motor vehicle allowance rates for car trip, but reimbursement not to exceed the cost of the return air fare for the Officer. Air fares for the dependent spouse and dependent children.	North of 20° South Latitude—two and one half days each way. Remainder - two days each way.

- (b) Officers whose headquarters are located 240 kilometres or more from Perth

- (i) Officers, other than those designated in paragraph (10)(a) whose headquarters are situated two hundred and forty kilometres or more from Perth General Post Office and who travel to Perth for their annual leave may be granted by the chief executive officer reasonable travelling time to enable them to complete the return journey.

(11) Leave Loading

- (a) Subject to the provisions of paragraphs (c) and (g) of this subclause, a loading equivalent to 17.5% of normal salary is payable to officers proceeding on annual leave, including accumulated annual leave.
- (b) Subject to the provisions of paragraphs (c) and (g) of this subclause, shift workers who are granted an additional week's penalty leave when proceeding on annual leave including accumulated annual leave shall be paid—
 - (i) shift and weekend penalties the officer would have received had the officer not proceeded on annual leave, or
 - (ii) a loading equivalent to 20% of normal salary for five weeks leave; whichever is the greater.

(c) Maximum Loading

- (i) Subject to the provisions of paragraph (e) of this subclause the loading is paid on a maximum of four weeks annual leave, or five weeks in the case of shift workers who are granted an additional weeks penalty leave. Payment of the loading is not made on additional leave granted for any other purpose (eg to officers whose headquarters are located North of the 26° South Latitude).
- (ii) Maximum payment shall not exceed the Average Weekly Total Earnings of all Males in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.
- (iii) Maximum payment to shift workers who are granted an additional weeks penalty leave shall not exceed 5/4th of the Average Weekly Total

Earnings of all Males in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

- (d) Annual leave commencing in any year and extending without a break into the following year attracts the loading calculated on the salary applicable on the day the leave commenced.
- (e) The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is commenced. Under these circumstances an officer can receive up to the maximum loading for the approved accumulated annual leave in addition to the loading for the current year's entitlement.
- (f) A pro rata loading is payable on periods of approved annual leave less than four weeks.
- (g) The loading is calculated on the rate of the normal fortnightly salary including any allowances which are paid as a regular fortnightly or annual amount. Any allowance paid to an officer for undertaking additional or higher level duties is only included if the allowance is payable during that period of normal annual leave as provided in subclauses (6) and (7) of Clause 14.—Higher Duties Allowance of this Award.
- (h) Where payment in lieu of accrued or pro rata annual leave is made on the death or retirement of an officer, a loading calculated in accordance with the terms of this clause is to be paid on accrued and pro rata annual leave.
- (i) When an officer resigns, or ceases employment, or where an officer is dismissed under Part IV Discipline, of the Public Service Act 1978, an annual leave loading shall be paid as follows—
 - (i) Accrued entitlements to annual leave—a loading calculated in accordance with the terms of this clause for accrued annual leave is to be paid.
 - (ii) Pro rata annual leave—no loading is to be paid.
- (j) Part-time officers shall be paid a proportion of the annual leave loading at the salary rate applicable, provided that the maximum loading payable shall be calculated in accordance with the following—

hours of work per fortnight	Maximum loading in accordance with subparagraph (c)(ii) of this clause
75	1

- (k) An officer who has been permitted to proceed on annual leave and who ceases duty other than by resignation or dismissal under Part IV of the Public Service Act 1978—Discipline, before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion of Leave Loading but no refund is required in the event of the death of an officer.
- (l) An officer who has been permitted to proceed on annual leave and who resigns or is dismissed under Part IV—Discipline, of the Act must refund the value of the loading paid for leave other than accrued leave.
- (m) The loading does not apply to Cadets on full time study.

20.—PUBLIC HOLIDAYS

- (1) The following days shall be allowed as holidays with pay—
 - (a) New Year's Day, Australia Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, Sovereign's Birthday, Foundation Day, Labour Day, provided that the Commissioner may approve another day to be taken as a holiday in lieu of any of the above mentioned days.
 - (b) Such Public Service Holidays as are prescribed by Regulations.
- (2) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or on a Sunday, the holiday shall be observed on the next succeeding Monday.

When Boxing Day falls on a Sunday or Monday, the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

21.—LONG SERVICE LEAVE

(1) Each officer who has completed—

- (a) A period of 7 years of continuous service in a permanent capacity; or
 - (b) 10 years of continuous service in a temporary capacity;
- shall be entitled to 13 weeks of long service leave on full pay.

(2) Where an officer has continuous service in both a temporary and permanent capacity the date on which he or she shall become entitled to long service leave shall be determined by taking into account on a proportional basis the periods of temporary and permanent service.

(3) Each officer is entitled to an additional 13 weeks of long service leave on full pay for each subsequent period of 7 years of continuous service completed by him or her.

(4) A part-time officer shall have the same entitlement to long service leave as full time officers however payment made during such periods of long service leave shall be adjusted according to the hours worked by the officer during that accrual period.

(5) For the purpose of determining an officer's long service leave entitlement, the expression "continuous service" includes any period during which the officer is absent on full pay or part pay from duties in the Public Service, but does not include—

- (a) any period exceeding two weeks during which the officer is absent on leave without pay or maternity leave, except where leave without pay is approved for the purpose of fulfilling an obligation by the Government of Western Australia to provide staff for a particular assignment external to the Public Sector of Western Australia;
- (b) any period during which an officer is taking long service leave entitlement or any portion thereof except in the case of subclause (11) when the period excised will equate to a full entitlement of 13 weeks;
- (c) any service by an officer who resigns, is dismissed or whose services are otherwise terminated other than service prior to such resignation, dismissal or termination when that prior service has actually entitled the officer to the long service leave under this clause;
- (d) any period of service that was taken into account in ascertaining the amount of a lump sum payment in lieu of long service leave;
- (e) any service of a Cadet whilst undertaking full time studies.

(6) A long service leave entitlement which fell due prior to March 16, 1988 amounted to three months. A long service leave entitlement which falls due on or after that date shall amount to thirteen weeks.

(7) Any Public Holiday or Public Service Holiday occurring during an officers absence on long service leave shall be deemed to be a portion of the long service leave and extra days in lieu thereof shall not be granted.

(8) The Commissioner or the chief executive officer may direct an officer to take accrued long service leave and may determine the date on which such leave shall commence. Should the officer not comply with the direction, disciplinary action may be taken against the officer.

(9) An officer who has elected to retire at or over the age of 55 years and who will complete not less than 12 months continuous service before the date of retirement may take application to the chief executive officer to take pro rata long service leave before the date of retirement, based on continuous service of a lesser period than that prescribed by this clause for a long service entitlement.

(10) Compaction of leave

- (a) An officer who, during an accrual period was subject to variations in ordinary working hours or whose

ordinary working hours during the accrual period are less than the officer's ordinary working hours at the time of commencement of long service leave, may elect to take a lesser period of long service leave calculated by converting the average ordinary working hours during the accrual period to the equivalent ordinary hours at the time of commencement of long service leave.

- (b) Notwithstanding subclause (6) of this clause, an officer who has elected to compact an accrued entitlement to long service leave in accordance with paragraph (10)(a) of this clause, shall only take such leave in any period on full pay, and the period excised as "continuous service" shall be 13 weeks.

(11) Portability

- (a) Where an officer was, immediately prior to being employed in the Public Service, employed in the service of—
 - The Commonwealth of Australia, or
 - Any other State Government of Australia, or
 - Any Western Australian State body or statutory authority prescribed in Administrative Instruction 611,

and the period between the date when the officer ceased previous employment and the date of commencing employment in the Public Service does not exceed one week, that officer shall be entitled to long service leave determined in the following manner—

- (i) the pro rata portion of long service leave to which the officer would have been entitled up to the date of appointment under the Public Service Act, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the officer may become entitled under this clause; and
- (ii) the balance of the long service leave entitlement of the officer shall be calculated upon appointment to the Public Service in accordance with the provisions of this clause.
- (b) Nothing in this clause confers or shall be deemed to confer on any officer previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of long service leave that accrued in the officer's favour prior to the date on which the officer commenced employment in the Public Service.

22.—SICK LEAVE

(1) Entitlement

- (a) The chief executive officer shall credit each permanent officer with the following sick leave credits, which shall be cumulative—

	Sick Leave on full pay	Sick Leave on half pay
On the day of initial appointment	37.5 hours	15 hours
On completion of 6 months continuous service	37.5 hours	22.5 hours
On the completion of 12 months continuous service	75 hours	37.5 hours
On the completion of each further period of 12 months continuous service	75 hours	37.5 hours

- (b) An officer employed on a fixed term contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent officer. An officer employed on a fixed term contract for a period less than 12 months, shall be credited with the same entitlement on a pro rata basis for the period of the contract.

- (c) A part-time officer shall be entitled to the same sick leave credits, on a pro rata basis according to the number of hours worked each fortnight. Payment for sick leave shall only be made for those hours that would normally have been worked had the officer not been on sick leave.
- (d) The provisions of this clause do not apply to casual officers.

(2) Medical Certificate

- (a) An application for sick leave exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, when the nature of the illness consists of a dental condition and the period of absence does not exceed five consecutive working days, by the certificate of a registered dentist.
- (b) The amount of sick leave granted without the production of the certificate required in paragraph (a) of this subclause shall not exceed, in the aggregate, 5 working days in any one credit year.

(3) Where the Chief Executive Officer has occasion for doubt as to the cause of the illness or the reason for the absence, the chief executive officer may arrange for a registered medical practitioner to visit and examine the officer, or may direct the officer to attend the medical practitioner for examination. If the report of the medical practitioner does not confirm that the officer is ill, or if the officer is not available for examination at the time of the visit of the medical practitioner, or fails, without reasonable cause, to attend the medical practitioner when directed to do so, the fee payable for the examination, appointment or visit shall be paid by the officer.

(4) If the chief executive officer has reason to believe that an officer is in such a state of health as to render a danger to fellow officers or the public, the officer may be required to obtain and furnish a report as to his/her condition from a registered medical practitioner or be examined by the Executive Director, Public Health and Scientific Support Services, Health Department of Western Australia or a registered medical practitioner nominated by the Executive Director. The fee for any such examination shall be paid by the Department.

(5) Where an officer is ill during the period of annual leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the chief executive officer that as a result of the illness the officer was confined to his/her place of residence or a hospital for a period of at least seven consecutive calendar days, the chief executive officer may grant sick leave for the period during which the officer was so confined and reinstate annual leave equivalent to the period of confinement.

(6) Where an officer is ill during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the chief executive officer that as a result of illness the officer was confined to his/her place of residence or a hospital for a period of at least 14 consecutive calendar days, the chief executive officer may grant sick leave for the period during which the officer was so confined and reinstate long service leave equivalent to the period of confinement.

(7) An officer who is absent on leave without pay is not eligible for sick leave during the currency of that leave without pay.

(8) No sick leave shall be granted with pay, if the illness has been caused by the misconduct of the officer or in any case of absence from duty without sufficient cause.

(9) Where an officer who has been retired from the Public Service on medical grounds resumes duty therein, sick leave credits at the date of retirement shall be reinstated. This provision does not apply to an officer who has resigned from the Public Service and is subsequently reappointed.

(10) Workers Compensation

Where an officer suffers a disability within the meaning of section 5 of the Worker's Compensation and Assistance Act, 1981 which necessitates that officer being absent from duty, sick leave with pay shall be granted to the extent of sick leave credits. In accordance with section 80(2) of the Worker's Compensation and Assistance Act, 1981 where the claim for worker's compensation is decided in favour of the officer, sick

leave credit is to be reinstated and the period of absence shall be granted as sick leave without pay.

(11) War Caused Illnesses

- (a) An officer who produces a certificate from the Department of Veterans' Affairs stating that the officer suffers from war caused illness, may be granted special sick leave credits of 112 hours 30 minutes (15 standard hour days) per annum on full pay in respect of that war caused illness. These credits shall accumulate up to a maximum credit of 337 hours and 30 minutes (45 standard hour days), and shall be recorded separately to the officer's normal sick leave credit.
- (b) Every application for sick leave for war caused illness shall be supported by a certificate from a registered medical practitioner as to the nature of the illness.

(12) Portability

- (a) The chief executive officer shall credit an officer additional sick leave credits up to those held at the date that officer ceased previous employment provided—
 - (i) immediately prior to commencing employment in the Public Service of Western Australia, the officer was employed in the service of—
 - The Commonwealth Government of Australia, or
 - Any other State of Australia, or
 - In a State body or statutory authority prescribed by Administrative Instruction 611; and
 - (ii) the officer's employment with the Public Service of Western Australia commenced no later than one week after ceasing previous employment.
- (b) The maximum break in employment permitted by subparagraph (a)(ii) of this subclause, may be varied by the approval of the chief executive officer provided that where employment with the Public Service of Western Australia commenced more than one week after ceasing the previous employment, the period in excess of one week does not exceed the amount of accrued and pro rata annual leave paid out at the date the officer ceased with the previous employer.

23.—MATERNITY LEAVE

(1) A pregnant officer is entitled to a maximum of twelve months Maternity Leave without pay.

(2) A pregnant officer shall, no later than ten weeks before the expected date of birth make application to the chief executive officer for maternity leave for a period not exceeding twelve months. Every application for maternity leave shall be supported by a certificate from a registered medical practitioner which shall indicate the expected date of birth.

(3) An officer proceeding on maternity leave may elect to take a shorter period of maternity leave in accordance with subclause (4) of this clause, and may at any time during that period of leave elect to extend or reduce the period of the original application within the limitations of the provisions of subclause (1) and (4) of this clause.

(4) The minimum period of absence on maternity leave shall commence six weeks before the expected date of birth and end six weeks after the day on which the birth has taken place, however an officer may apply to the chief executive officer to vary this period provided her application is supported by a certificate from a registered medical practitioner indicating that the officer is fit to continue or resume duty within this minimum period.

(5) An officer proceeding on maternity leave may elect to utilise—

- (a) accrued annual leave
- (b) accrued long service leave

for the whole or part of the period referred to in subclause (1) of this clause. The periods of leave referred to in paragraphs (a) and (b) of this subclause which are utilised, shall be paid leave.

(6) Absence of an officer which has been permitted in accordance with the provisions of this clause shall not be deemed absence on sick leave.

(7) Where an officer has not applied for leave in accordance with the provisions of this clause, and does not have express approval of the chief executive officer for continued employment, the chief executive officer may direct the officer to take maternity leave, and may determine the date on which such leave shall commence. Should the officer not comply with the direction, disciplinary action may be taken against her.

(8) A part-time officer shall have the same entitlement to maternity leave as full time officers.

(9) An officer employed on a fixed term contract shall have the same entitlement to maternity leave, however the period of leave granted shall not extend beyond the term of that contract.

24.—LEAVE WITHOUT PAY

(1) Subject to the provisions of subclause (2) of this clause, the chief executive officer may grant an officer leave without pay for any period and is responsible for that officer on his/her return.

(2) Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met—

- (a) The work of the department is not inconvenienced; and
- (b) All other leave credits of the officer are exhausted.

(3) A temporary officer or an officer on a fixed term appointment may not be granted leave without pay for any period beyond that officer's approved period of engagement.

(4) Leave Without Pay for Full Time Study

The chief executive officer may grant an officer leave without pay to undertake full time study, subject to a yearly review of satisfactory performance.

- (a) The course of study is directly related to the officers' official duties; or
- (b) The course is not available on a part-time basis; or
- (c) There is an identified shortage of individuals with skills in the area addressed by the particular course of study; or
- (d) It is critical to the continued operation of the department for the officer to undertake the particular course of study.

Leave without pay for this purpose shall not count as qualifying service for leave purposes.

(5) Leave Without Pay for Australian Institute of Sport Scholarships

Subject to the provisions of subclause (2) of this clause, the chief executive officer may grant an officer who has been awarded a sporting scholarship by the Australian Institute of Sport, leave without pay.

Leave without pay for this purpose shall count as qualifying service for all purposes except annual leave.

25.—STUDY LEAVE

(1) Conditions for Granting Time Off

- (a) An officer may be granted time off with pay for part-time study purposes at the discretion of the chief executive officer.
- (b) Part-time officers are entitled to study leave on the same basis as full time officers.
- (c) Time off with pay may be granted up to a maximum of five hours per week including travelling time, where subjects of approved courses are available during normal working hours, or where approved study by correspondence is undertaken, in remote locations lacking the required educational facilities.
- (d) External students based in remote locations, who are obliged to attend educational institutions for compulsory sessions during vacation periods, may be granted time off with pay including travelling time up to the maximum annual amount allowed to an officer in the metropolitan area.

(e) Officers shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

(f) In every case the approval of time off to attend lectures and tutorials will be subject to—

- (i) departmental convenience;
- (ii) the course being undertaken on a part-time basis;
- (iii) officers undertaking an acceptable formal study load in their own time;
- (iv) officers making satisfactory progress with their studies; and
- (v) the course being relevant to the officer's career in the Service and being of value to the State.

(g) A service agreement or bond will not be required.

(2) Payment of Fees

- (a) Departments are to meet the payment of higher education administrative charges for cadets and trainees who, as a condition of their employment, are required to undertake studies at a University or College of Advanced Education. Officers who of their own volition attend such institutions to gain higher qualifications will be responsible for the payment of fees.
- (b) This assistance does not include the cost of text books or Guild and Society fees.
- (c) An officer who is required to repeat a full academic year of the course will be responsible for payment of the higher education fees for that particular year.

(3) Approved Courses

- (a)
 - (i) First degree courses at the University of Western Australia, Murdoch University and Curtin University of Technology.
 - (ii) First degree or Associate Diploma courses at a college of advanced education.
 - (iii) Diploma courses at Technical and Further Education (TAFE).
 - (iv) Two year full time Certificate courses at (TAFE).
 - (v) Courses recognised by the National Authority for the Accreditation of Translators and Interpreters (NAATI) in a language relevant to the needs of the Public Sector. Further information on levels of accreditation and language study options is contained in the Public Service Commission's "Public Sector Language Services Strategy" document.
- (b) Except as outlined in paragraph (3)(d) of this clause, officers are not eligible for study assistance if they already possess one of the qualifications specified in subparagraphs (3)(a)(i) and (3)(a)(ii) of this clause.
- (c) An officer who has completed a Diploma through TAFE is eligible for study assistance to undertake a degree course at any of the tertiary institutions listed in subparagraph (3)(a)(i) or (3)(a)(ii) of this clause. An officer who has completed a two year full time Certificate through TAFE is eligible for study assistance to undertake a Diploma course specified in subclause (3)(a)(iii) or a degree or Associate Diploma course specified in subparagraph (3)(a)(i) or (3)(a)(ii) of this clause.
- (d) Assistance towards additional qualifications including second or higher degrees may be granted in special cases such as a graduate embarking on a post-graduate Diploma in Administration or a Masters Degree in Business Administration or a higher degree in a specialist area of benefit to the Service as well as the officer.

(4) (a) An acceptable part-time study load should be regarded as not less than five hours per week of formal tuition with at least half of the total formal study commitment being undertaken in the officer's own time, except in special cases such as where the officer is in the final year of study and requires less time to complete the course, or the officer is undertaking the

recommended part-time year or stage and this does not entail five hours formal study.

(b) A first degree or Associate Diploma course does not include the continuation of a degree or Associate Diploma towards a higher post graduate qualification.

(c) In cases where officers are studying subjects which require fortnightly classes the weekly study load should be calculated by averaging over two weeks the total fortnightly commitment.

(d) In departments which are operating on flexi-time, time spent attending or travelling to or from formal classes for approved courses between 8.15 am and 4.30 pm, less the usual lunch break, and for which "time off" would usually be granted, is to be counted as credit time for the purpose of calculating total hours worked per week.

(e) Travelling time returning home after lectures or tutorials is to be calculated as the excess time taken to travel home from such classes, compared with the time usually taken to travel home from the officer's normal place of work.

(f) An officer shall not be granted more than 5 hours time off with pay per week except in exceptional circumstances where the chief executive officer may decide otherwise.

(g) Time off with pay for those who have failed a unit or units may be considered for one repeat year only.

(5) Subject to the provisions of subclause (6) of this clause, the chief executive officer may grant an officer full time study leave with pay to undertake—

- (a) Post graduate degree studies at Australian or overseas tertiary education institutions; or
- (b) Study tours involving observations and/or investigations; or
- (c) A combination of post graduate studies and study tour.

(6) Applications for full time study leave with pay are to be considered on their merits and may be granted provided that the following conditions are met—

- (a) The course or a similar course is not available locally. Where the course of study is available locally, applications are to be considered in accordance with the provisions of subclause (1) to (5) of this Clause and Clause 24.—Leave Without Pay of this Award.
- (b) It must be a highly specialised course with direct relevance to the officer's profession.
- (c) It must be highly relevant to the department's corporate strategies and goals.
- (d) The expertise or specialisation offered by the course of study should not already be available through other officers employed within the department.
- (e) If the applicant was previously granted study leave, studies must have been successfully completed at that time. Where an officer is still under a bond, this does not preclude approval being granted to take further study leave if all the necessary criteria are met.
- (f) A temporary officer may not be granted study leave with pay for any period beyond that officer's approved period of engagement.

(7) Full time study leave with pay may be approved for more than 12 months subject to a yearly review of satisfactory performance.

(8) Where an outside award is granted and the studies to be undertaken are considered highly desirable by a department, financial assistance to the extent of the difference between the officer's normal salary and the value of the award may be considered. Where no outside award is granted and where a request meets all the necessary criteria then part or full payment of salary may be approved at the discretion of the chief executive officer.

(9) The Commissioner supports recipients of coveted awards and fellowships by providing study leave with pay. Recipients normally receive as part of the award or fellowship; return airfares, payment of fees, allowance for books, accommodation or a contribution towards accommodation.

(10) Where recipients are in receipt of a living allowance, this amount should be deducted from the officer's salary for that period.

(11) Where the chief executive officer approves full time study leave with pay the actual salary contribution forms part of the department's approved average staffing level funding allocation. Departments should bear this in mind if considering temporary relief.

(12) Where study leave with pay is approved and the department also supports the payment of transit costs and/or an accommodation allowance, approval for the transit and accommodation costs is required as follows—

Interstate—Ministerial approval

Overseas—Premier's approval

(13) Where officers travelling overseas at their own expense wish to participate in a study tour or convention whilst on tour, study leave with pay may be approved by the chief executive officer together with some local transit and accommodation expenses providing it meets the requirements of subclause (6) of this clause. Each case is to be considered on its merits.

(14) The period of full time study leave with pay is accepted as qualifying service for leave entitlements and other privileges and conditions of service prescribed for officers under this Award.

26.—SHORT LEAVE

(1) (a) A chief executive officer may, upon sufficient cause being shown, grant an officer short leave on full pay not exceeding 15 consecutive working hours, but any leave granted under the provisions of this clause shall not exceed, in the aggregate, 22½ hours in any one calendar year.

(b) The provisions of this clause also apply to any temporary officer who has completed at least 12 months of continuous service in the Public Service in a temporary capacity.

(c) Part-time officers are eligible for short leave in accordance with this clause, on a pro rata basis calculated in accordance with the following formula—

$$\frac{\text{hours worked per fortnight}}{75} \times \frac{22.5 \text{ hours}}{1}$$

(d) An officer employed on a fixed term contract of more than twelve months shall be eligible for short leave in accordance with this clause, and an officer employed on a fixed term contract of less than twelve months shall be eligible for pro rata short leave in accordance with this clause.

(2) Subject to the prior approval of the supervisor, officers located outside a radius of fifty (50) kilometres from the Perth Railway Station shall be allowed Short Leave where pressing personal matters can only be dealt with within the required hours of duty.

27.—LEAVE TO ATTEND ASSOCIATION BUSINESS

(1) The chief executive officer shall grant paid leave at the ordinary rate of pay during normal working hours to an officer—

- (a) who is required to give evidence before any Industrial Tribunal;
- (b) who as a union-nominated representative is required to attend negotiations and/or conferences between the union and the department;
- (c) when prior agreement between the union and the department has been reached for the officer to attend official union meetings preliminary to negotiations or industrial hearings; and
- (d) who as a union-nominated representative is required to attend joint union/management consultative committees or working parties.

(2) The granting of leave is subject to departmental convenience and shall only be approved—

- (a) where reasonable notice is given for the application for leave;
- (b) for the minimum period necessary to enable the union business to be conducted or evidence to be given; and
- (c) for those officers whose attendance is essential.

(3) The employer shall not be liable for any expenses associated with an officer attending to union business.

(4) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours.

(5) An officer shall not be entitled to paid leave to attend to union business other than as prescribed by this Clause.

(6) The provisions of the Clause shall not apply to—

- (a) special arrangements made with the union which provide for unpaid leave for officers to conduct union business;
- (b) when an officer is absent from work without the approval of the chief executive officer; and
- (c) casual officers.

28.—TRADE UNION TRAINING LEAVE

(1) Subject to departmental convenience, paid leave of absence shall be granted by the chief executive officer to officers who are nominated by their union to attend short courses or seminars as from time to time approved by agreement between the Department of Productivity and Labour Relations, chief executive officer and the relevant union.

(2) An officer shall be granted up to a maximum of five (5) days paid leave per calendar year for trade union training or similar courses or seminars as approved. However, leave of absence in excess of five (5) days and up to ten (10) days may be granted in any one calendar year provided that the total leave being granted in that year and in the subsequent year does not exceed ten (10) days.

(3) (a) Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

(b) Where a Public Holiday, Public Service Holiday or rostered day off falls during the duration of a course, a day off in lieu of that day will not be granted.

(c) Subject to paragraph (3)(a) of this clause, shift workers attending a course shall be deemed to have worked the shifts they would have worked had leave not been taken to attend the course.

(d) Part-time officers shall receive the same entitlement as full time officers, but payment shall only be made for those hours that would normally have been worked but for the leave.

(4) (a) Any application by an officer shall be submitted to the employer for approval at least four weeks before the commencement of the course unless the chief executive office agrees otherwise.

(b) All applications for leave shall be accompanied by a statement from the union indicating that the officer has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the authority which is conducting the course.

(5) A qualifying period of twelve months service shall be served before an officer is eligible to attend courses or seminars of more than a half day duration. The chief executive officer may, where special circumstances exist, approve an application to attend a course or seminar where an officer has less than twelve months service.

(6) (a) The department shall not be liable for any expenses associated with an officer's attendance at trade union training courses.

(b) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course.

29.—LEAVE FOR TRAINING WITH DEFENCE FORCE RESERVES

(1) Subject to departmental convenience, leave of absence may be granted by the chief executive officer to an officer who is a volunteer member of the Defence Force Reserves or the Cadet Force for the purpose of attending a training camp, school, class or course of instruction subject to the conditions set out hereunder.

- (a) Application for leave of absence for the above reasons, shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the officer shall furnish a certificate of attendance to the chief executive officer.

(b) An officer who is a member of the Defence Force Reserves and the Cadet Force may only be granted leave for attendance at one camp of continuous training and one additional special school, class or course of instruction in the 12 month period.

(c) On written application, an officer shall be paid salary in advance when proceeding on such leave.

(2) Attendance at a Camp for Annual Continuous Obligatory Training

(a) An officer may be granted leave for a period not exceeding 75 hours on full pay in any period of twelve months commencing on July 1, in each year.

(b) If the Officer-in-Charge of a military unit certifies that it is essential for an officer to be at the camp in an advance or rear party, a maximum of 30 extra hours on full pay may be granted in the twelve month period.

(3) Attendance at One Special School, Class or Course of Instruction

(a) In addition to the leave granted under subclause (2) of this clause a period not to exceed sixteen calendar days in any period of twelve months commencing on July 1, in each year may be granted by the chief executive officer, provided the chief executive officer is satisfied that the leave required is for a special purpose, and not for a further routine camp.

(b) In this circumstance, an officer may elect to utilise annual leave credits. However, if the leave is not taken from annual leave, salary during the period shall be at the rate of the difference between the normal remuneration of the officer as a public servant and the defence force payments to which the officer is entitled if such payments do not exceed normal salary. In calculating the pay differential, pay for Saturdays, Sundays, Public Holidays and Public Service Holidays and special rostered days off is to be excluded, and no account is to be taken of the value of any board or lodging provided for the officer.

(c) Leave without pay shall be granted if the defence force payments exceed the normal pay of the officer.

(4) The provisions of this clause do not apply to casual officers.

(5) Part-time officers shall receive the same entitlement as full time officers, but payment shall only be made for those hours that would normally have been worked but for the leave.

30.—CAMPING ALLOWANCE

(1) For the purposes of this clause the following expressions shall have the following meaning—

“Camp of a permanent nature” means single room accommodation in skid mounted or mobile type units, caravans, or barrack type accommodation where the following are provided in the camp—

- Water is freely available;
- Ablutions including a toilet, shower or bath and, laundry facilities;
- Hot water system;
- A kitchen, including a stove and table and chairs, except in the case of a caravan equipped with its cooking and messing facilities;
- An electricity or power supply, and
- Beds and mattresses except in the case of caravans containing sleeping accommodation.

For the purpose of this definition caravans located in caravan parks or other locations where the above are provided shall be deemed a camp of a permanent nature.

“House” means a house, duplex or cottage including transportable type accommodation which are self contained and in which the facilities prescribed for “camp of a permanent nature” are provided.

“Other than a permanent camp” means a camp where any of the above are not provided.

(2) An officer, who is stationed in a camp of a permanent nature, shall be paid the appropriate allowance prescribed by Item (1) or Item (2) of Schedule C for each day spent camping.

(3) An officer who is stationed in a camp—other than a permanent camp—or is required to camp out, shall be paid the appropriate allowance prescribed by Item (3) or Item (4) of Schedule C.—Camping Allowance for each day spent camping.

(4) Officers who occupy a house shall not be entitled to allowances prescribed by this Clause.

(5) Officers accommodated at a government institution, hostel or similar establishment shall not be entitled to allowances prescribed by this clause.

(6) Where an officer is provided with food and/or meals by the department free of charge, then the officer shall only be entitled to receive half the appropriate allowance to which the officer would otherwise be entitled for each day spent camping.

(7) (a) An officer shall not be entitled to receive an allowance under this Award for periods in excess of 91 consecutive days unless the Chief Executive Officer otherwise determines. Provided that where an officer is reimbursed under the provisions of Clause 42.—Travelling Allowance of this award, then such periods shall be included for the purposes of determining the 91 consecutive days.

(b) The Commissioner in reviewing any claim under this subclause may determine an allowance other than what is contained in Schedule C—Camping Allowance.

(8) When camping, an officer shall be paid the allowance on Saturdays and Sundays if available for work immediately preceding and succeeding such days and no deduction shall be made under these circumstances when an officer does not spend the whole or part of the weekend in camp, unless the officer is reimbursed under the provisions of Clause 42.—Travelling Allowance of this award.

(9) This clause shall be read in conjunction with Clauses 38.—Relieving Allowance, 41.—Transfer Allowance and 42.—Travelling Allowance of this Award for the purpose of paying allowances, and camping allowance shall not be paid for any period in respect of which travelling, transfer or relieving allowances are paid. Where portions of a day are spent camping, the formula contained in Clause 42.—Travelling Allowance of this Award shall be used for calculating the portion of the allowance to be paid for that day.

For the purposes of this subclause arrival at headquarters shall mean the time of actual arrival at camp. Departure from headquarters shall mean the time of actual departure from camp or the time of ceasing duty in the field subsequent to breaking camp, whichever is the latter.

(10) Officers in receipt of an allowance under this clause shall not be entitled to receive the incidental allowance prescribed by Clause 42.—Travelling Allowance of this Award.

(11) Whenever an officer provided with a caravan is obliged to park the caravan in a caravan park he or she shall be reimbursed the rental charges paid to the authority controlling the caravan park, in addition to the payment of camping allowance.

(12) Where an officer, who is not supplied with camping equipment by the department, hires such equipment as is reasonable and necessary, he or she shall be reimbursed such hire charges, in addition to the payment of camping allowances.

31.—DISTRICT ALLOWANCE

(1) For the purposes of this clause the following terms shall have the following meanings—

“Dependant” in relation to an officer means—

- (a) a spouse; or
- (b) where there is no spouse, a child or any other relative resident within the State who rely on the officer for their main support;

who does not receive a district or location allowance of any kind.

“Partial dependant” in relation to an officer (for the purpose of district allowance) means—

- (c) a spouse; or
- (d) where there is no spouse, a child or any other relative resident within the State who rely on the officer for their main support;

who receives a district or location allowance of any kind less than that applicable to an officer without dependants under any award, agreement or other provision regulating the employment of the partial dependant.

“Spouse” means an officer’s spouse including defacto spouse.

(2) Boundaries

For the purpose of Schedule D.—District Allowance of this Award, the boundaries of the various districts shall be as described hereunder and as delineated on the plan in Schedule D.—District Allowance to this Award.

District—

- (i) The area within a line commencing on the coast; thence east along lat 28 to a point north of Talling Peak, thence due south to Talling Peak; thence southeast to Mt Gibson and Burracoppin; thence to a point southeast at the junction of lat 32 and long 119; thence south along long 119 to coast.
- (ii) That area within a line commencing on the south coast at long 119 then east along the coast to long 123; then north along long 123 to a point on lat 30; thence west along lat 30 to the boundary of No 1 District.
- (iii) The area within a line commencing on the coast at lat 26; thence along lat 26 to long 123; thence south along long 123 to the boundary of No 2 District.
- (iv) The area within a line commencing on the coast at lat 24; thence east to the South Australian border; thence south to the coast; thence along the coast to long 123 thence north to the intersection of lat 26; thence west along lat 26 to the coast.
- (v) That area of the State situated between the lat 24 and a line running east from Carnot Bay to the Northern Territory Border.
- (vi) That area of the State north of a line running east from Carnot Bay to the Northern Territory Border.

(3) (a) An officer shall be paid a district allowance at the standard rate prescribed in Column II of Schedule D.—District Allowance of this Award, for the district in which the officer’s headquarters is located. Provided that where the officer’s headquarters is situated in a town or place specified in Column III of Schedule D.—District Allowance of this award, the officer shall be paid a district allowance at the rate appropriate to that town or place as prescribed in Column IV of the said schedule.

(b) An officer who has a dependant shall be paid double the district allowance prescribed by paragraph (3)(a) of this clause for the district, town, or place in which the officer’s headquarters is located.

(c) Where an officer has a partial dependant the total district allowance payable to the officer shall be the district allowance prescribed by paragraph (3)(a) of this clause plus an allowance equivalent to the difference between the rate of district or location allowance the partial dependant receives and the rate of district or location allowance the partial dependant would receive if he or she was employed in a full time capacity under the Award, Agreement or other provision regulating the employment of the partial dependant.

(d) When an officer is on approved annual recreational leave, the officer shall for the period of such leave, be paid the district allowance to which he or she would ordinarily be entitled.

(e) When an officer is on long service leave or other approved leave with pay (other than annual recreational leave), the officer shall only be paid district allowance for the period of such leave if the officer, dependant/s or partial dependant/s remain in the district in which the officer’s headquarters are situated.

(f) When an officer leaves his or her district on duty, payment of any district allowance to which the officer would ordinarily be entitled shall cease after the expiration of two weeks unless the officer’s dependant/s or partial dependant/s remain in the district or as otherwise approved by the Chief Executive Officer.

(g) Except as provided in paragraph (3)(f) of this clause, a district allowance shall be paid to any officer ordinarily

entitled thereto in addition to reimbursement of any travelling, transfer or relieving expenses or camping allowance.

(h) Where an officer whose headquarters is located in a district in respect of which no allowance is prescribed in Schedule D.—District Allowance of this Award, is required to travel or temporarily reside for any period in excess of one month in any district or districts in respect of which such allowance is so payable, then notwithstanding the officer's entitlement to any such allowance provided by Clause 30.—Camping Allowance, Clause 38.—Relieving Allowance, Clause 40.—Sea Going Allowance and Clause 42.—Travelling Allowance of this award the officer shall be paid for the whole of such a period a district allowance at the appropriate rate prescribed by paragraphs (3)(a), (3)(b) or (3)(c) of this clause, for the district in which the officer spends the greater period of time.

(i) When an officer is provided with free board and lodging by the employer or a public authority the allowance shall be reduced to two-thirds of the allowance the officer would ordinarily be entitled to under this clause.

(4) Part Time Officers

An officer who is employed on a part time basis shall be paid a proportion of the appropriate district allowance payable in accordance with the following formula—

$$\frac{\text{Hours worked per fortnight}}{75} \times \frac{\text{Appropriate District Allowance}}{1}$$

(5) Adjustment of Rates

The rates expressed in Schedule D.—District Allowance of this Award shall be adjusted administratively every twelve (12) months, effective from the first pay period to commence on or after the first day of July in each year, in accordance with the official Consumer Price Index (CPI) for Perth, as published for the preceding 12 months at the end of the March quarter by the Australian Bureau of Statistics.

Provided that, as agreed between the parties, the (CPI) for the March 1992 quarter shall be discounted by 1.03%.

The rates agreed, in accordance with the above formula, by the parties shall then be lodged with the Registrar of the Western Australian Industrial Relations Commission.

32.—DISTURBANCE ALLOWANCE

(1) Where an officer is transferred and incurs expenses in the areas referred to in subclause (2) of this clause as a result of that transfer then the officer shall be granted a disturbance allowance and shall be reimbursed by the department the actual expenditure incurred upon production of receipts or such other evidence as may be required.

(2) The disturbance allowance shall include—

- (a) Costs incurred for telephone installation at the officer's new residence provided that the cost of telephone installation shall be reimbursed only where a telephone was installed at the officer's former residence including departmental accommodation.
- (b) Costs incurred with the connection or reconnection of services to the officer's household including departmental accommodation for water, gas or electricity.
- (c) costs incurred with the redirection of mail to the officer's new residence for a period of no more than three months.

33.—DIVING ALLOWANCE

(1) An officer who undertakes diving as part of his or her official duties or as a special duty which is sanctioned by the Chief Executive Officer of his or her department shall be paid an allowance as prescribed in Schedule K.—Diving, Flying and Seagoing Allowance for such diving. This allowance shall be in addition to any other payment for duties performed.

Provided that such allowance shall be paid only to an officer engaged on diving when self-contained underwater breathing apparatus or deep sea diving equipment is used.

34.—FLYING ALLOWANCE

An officer who in the course of his or her official duties is required to fly in an aircraft other than those used in public air services, shall be paid an allowance as prescribed in Schedule

K.—Diving, Flying and Seagoing Allowances of this award for the following duties:

- (a) Observation and photographic duties, in a fixed wing aircraft.
- (b) Cloud seeding and fire bombing duties, observation and photographic duties involving operations in which fixed wing aircraft are used at heights of less than 304 metres or in unpressurised aircraft at heights of more than 3048 metres.
- (c) When required to fly in a helicopter on fire bombing duties, observation and photographic duties or stock surveillance.

35.—MOTOR VEHICLE ALLOWANCE

For the purposes of this clause the following expressions shall have the following meanings—

- (1) (a) "A year" means 12 months commencing on the 1st day of July and ending on the 30th day of June next following.
- (b) "Metropolitan area" means that area within a radius of 50 kilometres from the Perth City Railway Station.
- (c) "South West land division" means the South West land division as defined by section 28 of the Land Act, 1933-1972 excluding the area contained within the metropolitan area.
- (d) "Rest of the State" means that area south of 23.5 degrees south latitude, excluding the metropolitan area and the South West land division.
- (e) "Term of Employment" means a requirement made known to the officer at the time of applying for the position by way of publication in the advertisement for the position, written advice to the officer contained in the offer for the position or oral communication at interview by an interviewing officer and such requirement is accepted by the officer either in writing or orally.
- (f) "Qualifying Service" shall include all service in positions where there is a requirement as a term of employment to supply and maintain a motor vehicle for use on official business but shall exclude all absences which effect entitlements as provided by the schedule attached to Public Service Board Administrative Instruction 610.

(2) Allowance for Officers required to supply and maintain a vehicle as a term of employment—

- (a) An officer who is required to supply and maintain a motor vehicle for use when travelling on official business as a term of employment shall be reimbursed in accordance with the appropriate rates set out in Schedule E.—Motor Vehicle Allowance for journeys travelled on official business and approved by the Chief Executive Officer.
- (b) An officer who is reimbursed under the provisions of paragraph (2)(a) will also be subject to the following conditions—
 - (i) For the purposes of subclause (2) an officer shall be reimbursed with the appropriate rates set out in Schedule E.—Motor Vehicle Allowance for the distance travelled from the officer's residence to the place of duty and for the return distance travelled from place of duty to residence except on a day where the officer travels direct from residence to headquarters and return and is not required to use the vehicle on official business during the day.
 - (ii) Where an officer in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable

- to each of the areas traversed as set out in Schedule E.—Motor Vehicle Allowance
- (iii) Where an officer does not travel in excess of 4,000 kilometres in a year an allowance calculated by multiplying the appropriate rate per kilometre by the difference between the actual distance travelled and 4,000 kilometres shall be paid to the officer provided that where the officer has less than 12 months qualifying service in the year then the 4,000 kilometre distance will be reduced on a pro rata basis and the allowance calculated accordingly.
- (iv) Where a part-time officer is eligible for the payment of an allowance under subparagraph (iii) of this subclause such allowance shall be calculated on the proportion of total hours worked in that year by the officer to the annual standard hours had the officer been employed on a full time basis for the year.
- (v) An officer who is required to supply and maintain a motor vehicle for use on official business is excused from this obligation in the event of his/her vehicle being stolen, consumed by fire, or suffering a major and unforeseen mechanical breakdown or accident, in which case all entitlement to reimbursement ceases while the officer is unable to provide the motor vehicle or a replacement.
- (vi) The Chief Executive Officer may elect to waive the requirement that an officer supply and maintain a motor vehicle for use on official business, but three months written notice of the intention so to do shall be given to the officer concerned.
- (3) Allowance for officers relieving officers subject to subclause (2) of this clause
- (a) An officer not required to supply and maintain a motor vehicle as a term of employment who is required to relieve an officer required to supply and maintain a motor vehicle as a term of employment shall be reimbursed all expenses incurred in accordance with the appropriate rates set out in Schedule E.—Motor Vehicle Allowance for all journeys travelled on official business and approved by the Chief Executive Officer where the officer is required to use his/her vehicle on official business whilst carrying out the relief duties.
- (b) For the purposes of paragraph (3)(a) of this clause an officer shall be reimbursed all expenses incurred in accordance with the appropriate rates set out in Schedule E.—Motor Vehicle Allowance for the distance travelled from the officer's residence to place of duty and the return distance travelled from place of duty to residence except on a day where the officer travels direct from residence to headquarters and return and is not required to use the vehicle on official business during the day.
- (c) Where an officer in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in Schedule E.—Motor Vehicle Allowance
- (d) For the purpose of this subclause the allowance provided in subparagraphs (2)(b)(iii) and (iv) of this clause shall not apply.
- (4) Allowance for other officers using vehicle on official business.
- (a) An officer who is not required to supply and maintain a motor vehicle for use when travelling on official business as a term of employment, but when requested by the Chief Executive Officer voluntarily consents to use the vehicle shall for journeys travelled on official business approved by the Chief Executive Officer be reimbursed all expenses incurred in accordance with the appropriate rates set out in Schedule F.—Motor Vehicle Allowance and Schedule G.—Motor Cycle Allowance
- (b) For the purpose of paragraph (4)(a) of this clause an officer shall not be entitled to reimbursement for any expenses incurred in respect to the distance between the officer's residence and headquarters and the return distance from headquarters to residence.
- (c) Where an officer in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate if applicable to each of the areas traversed as set out in Schedule F.—Motor Vehicle Allowance.
- (5) Allowance for towing Departmental caravan or trailer.
- In cases where officers are required to tow departmental caravans on official business, the additional rate shall be three cents per kilometre. When departmental trailers are towed on official business the additional rate shall be two cents per kilometre.
- (6) Special Conditions.
- Notwithstanding the provisions of Clause 5.—Term of Award of this Award where the cost of vehicles and petrol increase or decrease such that a corresponding increase or decrease in the allowance provided for a vehicle over 1600cc in the metropolitan area would amount to 0.1 of a cent or greater then the parties agree that the allowance shall be increased or decreased accordingly.

36.—PROPERTY ALLOWANCE

(1) For the purposes of this clause the following expressions shall have the following meanings—

- (a) "Agent" means a person carrying on business as an estate agent in a State or Territory of the Commonwealth, being, in a case where the law of that State or Territory provides for the registration or licensing of persons who carry on such a business, a person duly registered or licensed under that law.
- (b) "Dependant" in relation to an officer means—
- (i) spouse including defacto spouse;
 - (ii) child/children; or
 - (iii) other dependant family;
- who resides with the officer and who relies on the officer for support.
- (c) "Expenses" in relation to an officer means all costs incurred by the officer in the following areas—
- (i) Legal fees in accordance with the Solicitor's Remuneration Order, 1976 as amended and varied, duly paid to a solicitor or in lieu thereof fees charged by a settlement agent for professional costs incurred in respect of the sale or purchase, the maximum fee to be claimed shall be as set out under item 8 of the above order.
 - (ii) Disbursements duly paid to a solicitor or a settlement agent necessarily incurred in respect of the sale or purchase of the residence.
 - (iii) Real Estate Agent's Commission in accordance with that fixed by the Real Estate and Business Agents Supervisory Board, acting under Section 61 of the Real Estate and Business Agents Act, 1978, duly paid to an agent for services rendered in the course of and

incidental to the sale of the property, the maximum fee to be claimed shall be fifty percent (50%) as set out under Items 1 or 2—Sales by Private Treaty or Items 1 or 2—Sales by Auction of the Maximum Remuneration Notice

- (iv) Stamp Duty.
- (v) Fees paid to the Registrar of Titles or to the officer performing duties of a like nature and for the same purpose in another State or Territory of the Commonwealth.
- (vi) Expenses relating to the execution or discharge of a first mortgage.
- (vii) The amount of expenses reasonably incurred by the officer in advertising the residence for sale.

(d) “Locality” in relation to an officer means—

- (i) Within the metropolitan area, that area within a radius of fifty (50) kilometres from the Perth City Railway Station, and
- (ii) Outside the metropolitan area, that area within a radius of fifty (50) kilometres from an officer’s headquarters when they are situated outside of the metropolitan area.

(e) “Property” shall mean a residence as defined in this clause including a block of land purchased for the purpose of erecting a residence thereon to the extent that it represents a normal urban block of land for the particular locality.

(f) “Residence” includes any accommodation of a kind commonly known as a flat or a home unit that is, or is intended to be, a separate tenement including dwelling house, and the surrounding land, exclusive of any other commercial property, as would represent a normal urban block of land for the particular locality.

(g) “Settlement Agent” means a person carrying on business as settlement agent in a State or Territory of the Commonwealth, being, in a case where the law of that State or Territory provides for the registration or licensing of persons who carry on such a business, a person duly registered or licensed under the law.

(2) When an officer is transferred from one locality to another in the public interest or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the officer has no control, the officer shall be entitled to be paid a property allowance for reimbursement of expenses incurred by the officer—

- (a) In the sale of residence in the officer’s former locality, which, at the date on which the officer received notice of transfer to a new locality—
 - (i) the officer owned and occupied; or
 - (ii) the officer was purchasing under a contract of sale providing for vacant possession; or
 - (iii) the officer was constructing for the officer’s own permanent occupation, on completion of construction; and
- (b) In the purchase of a residence or land for the purpose of erecting a residence thereon for the officer’s own permanent occupation in the new locality.

(3) An officer shall be reimbursed such following expenses as are incurred in relation to the sale of a residence—

- (a) If the officer engaged an agent to sell the residence on the officer’s behalf—50 percent of the amount of the commission paid to the agent in respect of the sale of the residence;
- (b) if a solicitor was engaged to act for the officer in connection with the sale of the residence—the amount of the professional costs and disbursements necessarily incurred and paid to the solicitor in respect of the sale of the residence;

(c) if the land on which the residence is created was subject to a first mortgage and that mortgage was discharged on the sale, then an officer shall, if, in a case where a solicitor acted for the mortgagee in respect of the discharge of the mortgage and the officer is required to pay the amount of professional costs and disbursements necessarily incurred by the mortgagee in respect of the discharge of the mortgage—the amount so paid by the officer;

(d) if the officer did not engage an agent to sell the residence on his or her behalf—the amount of the expenses reasonably incurred by the officer in advertising the residence for sale.

(4) An officer shall be reimbursed such following expenses as are incurred in relation to the purchase of a residence—

(a) if a solicitor or settlement agent was engaged to act for the officer in connection with the purchase of the residence—the amount of the professional costs and disbursements necessarily incurred are paid to the solicitor or settlement agent in respect of the purchase of the residence;

(b) if the officer mortgaged the land on which the residence was erected in conjunction with the purchase of the residence, then an officer shall, if, in a case where a solicitor acted for the mortgagee and the officer is required to pay and has paid the amount of the professional costs and disbursements (including valuation fees but not a procuracy fee payable in connection with the mortgage) necessarily incurred by the mortgagee in respect of the mortgage—the amount so paid by the officer;

(c) if the officer did not engage a solicitor or settlement agent to act for the officer in connection with the purchase or such a mortgage—the amount of the expenses reasonably incurred by the officer in connection with the purchase or the mortgage, as the case may be, other than a procuracy fee paid by the officer in connection with the mortgage.

(5) An officer is not entitled to be paid a property allowance under paragraph (2)(b) of this clause unless the officer is entitled to be paid a property allowance under paragraph (2)(a) of this clause, provided that the Chief Executive Officer may approve the payment of a property allowance under paragraph (2)(b) of this clause to an officer who is not entitled to be paid a property allowance under paragraph (2)(a) of this clause if the Chief Executive Officer is satisfied that it was necessary for the officer to purchase a residence or land for the purpose of erecting a residence thereon in the officer’s new locality because of the officer’s transfer from the former locality.

(6) For the purpose of this Award it is immaterial that the ownership, sale or purchase is carried out on behalf of an officer who owns solely, jointly or in common with—

- (a) the officer’s spouse, or
- (b) a dependant relative, or
- (c) the officer’s spouse and a dependant relative.

(7) Where an officer sells or purchases a residence jointly or in common with another person—not being a person referred to in subclause (6) of this clause the officer shall be paid only the proportion of the expenses for which the officer is responsible.

(8) An application by an officer for a property allowance shall be accompanied by evidence of the payment by the officer of the expenses, being evidence that is satisfactory to the Chief Executive Officer.

(9) Notwithstanding the foregoing provisions, an officer is not entitled to the payment of a property allowance—

- (a) In respect of a sale or purchase prescribed in subclause (2) of this clause which is effected—
 - (i) more than twelve months after the date on which the officer took up duty in the new locality; or

- (ii) after the date on which the office received notification of being transferred back to the former locality;

Provided that the Chief Executive Officer may, in exceptional circumstances, grant an extension of time for such period as is deemed reasonable.

- (b) Where the officer is transferred from one locality to another solely at the officer's own request or on account of misconduct.

37.—PROTECTIVE CLOTHING ALLOWANCE

An officer engaged on work which requires the provision of protective clothing shall be:

- (a) Provided with the requisite protective clothing, with the laundering costs for such protective clothing being at the expense of the department; or
- (b) Provided with an annual allowance, as agreed between the Association and the Commissioner, which shall incorporate the cost of purchase and laundry of the requisite protective clothing.

Provided that nothing contained in this clause shall affect the obligations of the department to provide clothing pursuant to the Occupational Health, Safety and Welfare Act, 1984.

38.—RELIEVING ALLOWANCE

An officer who is required to take up duty away from headquarters on relief duty or to perform special duty, and necessarily resides temporarily away from the officer's usual place of residence shall be reimbursed reasonable expenses on the following basis—

- (1) Where the officer—
- is supplied with accommodation and meals free of charge, or
- is accommodated at a government institution, hostel or similar establishment and supplied with meals,
- reimbursement shall be in accordance with the rates prescribed in Column A, Items (1), (2) or (3) of Schedule I.—Travelling, Transfer and Relieving Allowance.
- (2) Where officers are fully responsible for their own accommodation, meals and incidental expenses and hotel or motel accommodation is utilised—
- (a) For the first forty-two (42) days after arrival at the new locality reimbursement shall be in accordance with the rates prescribed in Column A, Items (4) to (8) of Schedule I.—Travelling, Transfer and Relieving Allowance.
- (b) For periods in excess of forty-two (42) days after arrival in the new locality reimbursement shall be in accordance with the rates prescribed in Column B, Items (4) to (8) of Schedule I.—Travelling, Transfer and Relieving Allowance for officers with dependants or Column C, Items (4) to (8) of Schedule I.—Travelling, Transfer and Relieving Allowance for other officers: Provided that the period of reimbursement under this subclause shall not exceed forty-nine (49) days without the approval of the Chief Executive Officer.
- (3) Where officers are fully responsible for their own accommodation, meal and incidental expenses and other than hotel or motel accommodation is utilised reimbursement shall be in accordance with the rates prescribed in Column A, Items (9), (10) or (11) of Schedule I.—Travelling, Transfer and Relieving Allowance.
- (4) If an officer whose normal duties do not involve camp accommodation is required to relieve or perform special duty resulting in a stay at a camp, the officer shall be paid camping allowance for the duration of the period spent in camp, and in addition, shall be

paid a lump sum of \$124.00 to cover incidental personal expenses: Provided that an officer shall receive no more than one lump sum of \$124.00 in any one period of three (3) years.

- (5) Reimbursement of expenses shall not be suspended should an officer become ill whilst on relief duty, provided leave for the period of such illness is approved in accordance with the provisions of this Award and the officer continues to incur accommodation, meal and incidental expenses.
- (6) When an officer who is required to relieve or perform special duties in accordance with the preamble of this clause is authorised by the Chief Executive Officer to travel to the new locality in the officer's own motor vehicle, reimbursement for the return journey shall be as follows—
- (a) Where the officer will be required to maintain a motor vehicle for the performance of the relieving or special duties, reimbursement shall be in accordance with the appropriate rate prescribed by subclause (2) of Clause 35.—Motor Vehicle Allowance of this award.
- (b) Where the officer will not be required to maintain a motor vehicle for the performance of the relieving or special duties reimbursement shall be on the basis of one half (½) of the appropriate rate prescribed by subclause (2) of Clause 35.—Motor Vehicle Allowance of this award. Provided that the maximum amount of reimbursement shall not exceed the cost of the fare by public conveyance which otherwise would be utilised for such return journey.
- (7) Where it can be shown by the production of receipts or other evidence that an allowance payable under this clause would be insufficient to meet reasonable additional costs incurred, an appropriate rate of reimbursement shall be determined by the Chief Executive Officer.
- (8) The provisions of Clause 42.—Travelling Allowance shall not operate concurrently with the provisions of this clause to permit an officer to be paid allowances in respect of both travelling and relieving expenses for the same period: Provided that where an officer is required to travel on official business which involves an overnight stay away from the officer's temporary headquarters the Chief Executive Officer may extend the periods specified in subclause (2) of this clause by the time spent in travelling.
- (9) An officer who is directed to relieve another officer or to perform special duty away from the officer's usual headquarters and is not required to reside temporarily away from his or her usual place of residence shall, if the officer is not in receipt of a higher duties or special allowance for such work, be reimbursed the amount of additional fares paid by the officer travelling by public transport to and from the place of temporary duty.

39.—REMOVAL ALLOWANCE

- (1) When an officer is transferred in the public interest, or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the officer has no control, the officer shall be reimbursed—
- (a) The actual reasonable cost of conveyance of the officer and dependants.
- (b) The actual cost (including insurance) of the conveyance of an officer's household furniture effects and appliances up to a maximum volume of 35 cubic metres, provided that a larger volume may be approved by the Chief Executive Officer in special cases.
- (c) An allowance of \$501 for accelerated depreciation and extra wear and tear on furniture, effects and

appliances for each occasion that an officer is required to transport his or her furniture, effects and appliances provided that the Chief Executive Officer is satisfied that the value of household furniture, effects and appliances moved by the officer is at least \$2,996.

- (d) Reimbursement of reasonable expenses in kennelling and transporting of domestic pet or pets up to a maximum amount of \$134.00.

Pets are defined as dogs, cats, birds or other domestic animals kept by the officer or the officer's dependants for the purpose of household enjoyment.

Pets do not include domesticated livestock, native animals nor equine animals.

(2) An officer who is transferred solely at his or her own request or on account of misconduct must bear the whole cost of removal unless otherwise determined by the Commissioner prior to removal.

(3) An officer shall be reimbursed the full freight charges necessarily incurred in respect of the removal of the officer's motor vehicle. If authorised by the Chief Executive Officer to travel to a new locality in the officer's own motor vehicle, reimbursement shall be as follows—

- (a) Where the officer will be required to maintain a motor vehicle for use on official business at the new headquarters, reimbursement for the distance necessarily travelled shall be on the basis of the appropriate rate prescribed by subclause (2) of Clause 35.—Motor Vehicle Allowance of this Award.
- (b) Where the officer will not be required to maintain a motor vehicle for use on official business at the new headquarters reimbursement for the distance necessarily travelled shall be on the basis of one half (½) of the appropriate rate prescribed by subclause (3) of Clause 35.—Motor Vehicle Allowance of this Award.

(4) The officer shall, before removal is undertaken obtain quotes from at least two carriers which shall be submitted to the Chief Executive Officer, who may authorise the acceptance of the more suitable: Provided that payment for a volume amount beyond 35 cubic metres by a department is not to occur without the prior written approval of the Chief Executive Officer.

(5) The Chief Executive Officer may, in lieu of conveyance, authorise payment to compensate for any loss in any case where an officer, with prior approval of the Chief Executive Officer, disposes of his or her household furniture effects and appliances instead of removing them to the new headquarters: Provided that such payments shall not exceed the sum which would have been paid if the officer's household furniture effects and appliances had been removed by the cheapest method of transport available and the volume was 35 cubic metres.

(6) Where an officer is transferred to government owned or private rental accommodation, where furniture is provided, and as a consequence the officer is obliged to store furniture, the officer shall be reimbursed the actual cost of such storage up to a maximum allowance of \$931.00 per annum. Actual cost is deemed to include the premium for adequate insurance coverage for the value of the furniture stored. An allowance under this subclause shall not be paid for a period in excess of four years without the approval of the employer.

(7) Receipts must be produced for all sums claimed.

(8) New appointees to the public service shall be entitled to receive the benefits of this clause if they are required by the employer to participate in any training course prior to being posted to their respective positions in the service. This entitlement shall only be available to officers who have completed their training and who incur costs when moving to their first posting.

40.—SEA GOING ALLOWANCE

- (1) Victualling Allowance—Government Vessels.

- (a) An officer who is required to live on board a vessel and is necessarily absent from his or her usual place

of residence overnight, shall be paid a victualling allowance as prescribed in Schedule K.—Diving, Flying and Seagoing Allowance to cover victualling and all incidents of employment other than overtime.

- (b) The daily allowance shall be paid for each day exceeding eight hours spent on board a vessel, provided that one half of the allowance shall be paid for any part of a day not exceeding eight hours.

- (2) Victualling Allowance—Non Government Vessels.

- (a) Charges for victualling levied on an officer when accommodated on other than a government vessel shall be met by the Department and the victualling allowance referred to in subclause (1) of this clause shall not be payable.

- (b) Subject to the decision of the Chief Executive Officer that the difficulties of living on board the non government vessel are greater than those normally encountered on a government vessel, an allowance as prescribed in Schedule K.—Diving, Flying and Seagoing Allowance for each occasion on which the officer is accommodated overnight, shall be paid.

- (3) Hard Living Allowance—All Vessels.

To compensate for difficulties associated with living in small vessels at sea an allowance as prescribed in Schedule K.—Diving, Flying and Seagoing Allowance shall be paid to officers for every hour spent at sea in excess of 36 consecutive hours on a single trip.

(4) An officer in receipt of an allowance prescribed by this clause shall not receive payment of allowances prescribed in Clause 38.—Relieving Allowance or Clause 42.—Travelling Allowance of this Award.

41.—TRANSFER ALLOWANCE

(1) Subject to subclauses (2) and (5) of this clause an officer who is transferred to a new locality in the public interest, or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the officer has no control, shall be paid at the rates prescribed in Column A, Item (4), (5) or (6) of Schedule I.—Travelling, Transfer and Relieving Allowance for a period of 14 days after arrival at new headquarters within Western Australia or Column A, Items (7) and (8) of Schedule I.—Travelling, Transfer and Relieving Allowance for a period of 21 days after arrival at a new headquarters in another State of Australia: Provided that if an officer is required to travel on official business during the said periods, such period will be extended by the time spent in travelling. Under no circumstances, however, shall the provisions of this subclause operate concurrently with those of Clause 42.—Travelling Allowance of this award to permit an officer to be paid allowances in respect of both travelling and transfer expenses for the same period.

(2) Prior to the payment of an allowance specified in subclause (1) of this clause, the Chief Executive Officer shall—

- (a) Require the officer to certify that permanent accommodation has not been arranged or is not available from the date of transfer. In the event that permanent accommodation is to be immediately available, no allowance is payable; and
- (b) Require the officer to advise the Department that should permanent accommodation be arranged or become available within the prescribed allowance periods, the officer shall refund the pro rata amount of the allowance for that period the occupancy in permanent accommodation takes place prior to the completion of the prescribed allowance periods.

Provided also that should an occupancy date which falls within the specified allowance periods be notified to the Department prior to the officer's transfer, the payment of a pro rata amount of the allowance should be made in lieu of the full amount.

(3) If an officer is unable to obtain reasonable accommodation for the transfer of his or her home within the prescribed period referred to in subclause (1) of this clause and the Chief Executive Officer is satisfied that the officer has taken all

possible steps to secure reasonable accommodation, such of-
ficer shall, after the expiration of the prescribed period to be
paid in accordance with the rates prescribed by Column B,
Items (4), (5), (6), (7) or (8) of Schedule I.—Travelling, Trans-
fer and Relieving Allowance as the case may require, until
such time as the officer has secured reasonable accommoda-
tion: Provided that the period of reimbursement under this
subclause shall not exceed 77 days without the approval of the
Chief Executive Officer.

(4) When it can be shown by the production of receipts or
other evidence that an allowance payable under this clause
would be insufficient to meet reasonable additional costs in-
curred by an officer on transfer, an appropriate rate of
reimbursement shall be determined by the Chief Executive
Officer.

(5) An officer who is transferred to departmental accommo-
dation shall not be entitled to reimbursement under this clause:
Provided that—

- (a) where entry into departmental accommodation is
delayed through circumstances beyond the officer's
control an officer may, subject to the production of
receipts, be reimbursed actual reasonable accommo-
dation and meal expenses for the officer and
dependants less a deduction for normal living ex-
penses prescribed in Column A, Items (15) and (16)
of Schedule I.—Travelling, Transfer and Relieving
Allowance.
and provided that—
- (b) if any costs are incurred under subclause (2) of Clause
32.—Disturbance Allowance of this Award they shall
be reimbursed by the department.

42.—TRAVELLING ALLOWANCE

An officer who travels on official business shall be reim-
bursed reasonable expenses on the following basis—

- (1) When a trip necessitates an overnight stay away from
headquarters and the officer—
is supplied with accommodation and meals free of
charge; or
attends a course, conference, etc., where the fee paid
includes accommodation and meals; or
travels by rail and is provided with a sleeping berth
and meals; or
is accommodated at a Government institution, hos-
tel or similar establishment and supplied with meals;
reimbursement shall be in accordance with the rates
prescribed in Column A, Items (1), (2) or (3) of
Schedule I.—Travelling, Transfer and Relieving Al-
lowance.
- (2) When a trip necessitates an overnight stay away from
headquarters and the officer is fully responsible for
his or her own accommodation, meals and incidental
expenses—
(a) where hotel or motel accommodation is uti-
lised reimbursement shall be in accordance
with the rates prescribed in Column A, Items
(4) to (8) of Schedule I.—Travelling, Trans-
fer and Relieving Allowance; and
(b) where other than hotel or motel accommo-
dation is utilised reimbursement shall be in
accordance with the rates prescribed in Col-
umn A, Items (9), (10) or (11) of Schedule
I.—Travelling, Transfer and Relieving Allow-
ance.
- (3) When a trip necessitates an overnight stay away from
headquarters and accommodation only is provided
at no charge to the officer, reimbursement shall be
made in accordance with the rates prescribed in Col-
umn A, Items 1, 2 or 3 and Items 12, 13 or 14 of
Schedule I.—Travelling, Transfer and Relieving Al-
lowance subject to the employees' certification that
each meal claimed was actually purchased.

(4) To calculate reimbursement under subclauses (1) and
(2) of this clause for a part of a day, the following
formula shall apply—

- (a) If departure from headquarters is—
before 8.00am—100% of the daily rate.
8.00am or later but prior to 1.00pm—90% of
the daily rate.
1.00pm or later but prior to 6.00pm—75% of
the daily rate.
6.00pm or later—50% of the daily rate.
- (b) If arrival back at headquarters is—
8.00am or later but prior to 1.00pm—10% of
the daily rate.
1.00pm or later but prior to 6.00pm—25% of
the daily rate.
6.00pm or later but prior to 11.00pm—50%
of the daily rate.
11.00pm or later—100% of the daily rate.

(5) When an officer travels to a place outside a radius of
fifty (50) kilometres measured from the officer's
headquarters, and the trip does not involve an over-
night stay away from headquarters, reimbursement
for all meals claimed shall be at the rates set out in
Column A, Items (12) or (13) of Schedule I.—Trav-
elling, Transfer and Relieving Allowance subject to
the officer's certification that each meal claimed was
actually purchased: Provided that when an officer
departs from headquarters before 8.00am and does
not arrive back at headquarters until after 11.00pm
on the same day the officer shall be paid at the ap-
propriate rate prescribed in Column A, Items (4) to
(8) of Schedule I.—Travelling, Transfer and Reliev-
ing Allowance.

(6) When it can be shown to the satisfaction of the Chief
Executive Officer by the production of receipts that
reimbursement in accordance with Schedule I.—
Travelling, Transfer and Relieving Allowance does
not cover an officer's reasonable expenses for a whole
trip the officer shall be reimbursed the excess ex-
penditure.

(7) In addition to the rates contained in Schedule I.—
Travelling, Transfer and Relieving Allowance an
officer shall be reimbursed reasonable incidental
expenses such as train, bus and taxi fares, official
telephone calls, laundry and dry cleaning expenses,
on production of receipts.

(8) If on account of lack of suitable transport facilities
an officer necessarily engages reasonable accommo-
dation for the night prior to commencing travelling
on early morning transport the officer shall be reim-
bursed the actual cost of such accommodation.

(9) Reimbursement of expenses shall not be suspended
should an officer become ill whilst travelling, pro-
vided leave for the period of such illness is approved
in accordance with provisions of Clause 22.—Sick
Leave of this award, and the officer continues to in-
cur accommodation, meal and incidental expenses.

(10) Reimbursement claims for travelling in excess of 14
days in one month shall not be passed for payment
by a certifying officer unless the Chief Executive
Officer has endorsed the account.

(11) An officer who is relieving at or temporarily trans-
ferred to any place within a radius of fifty (50)
kilometres measured from the officer's headquarters
shall not be reimbursed the cost of midday meals
purchased, but an officer travelling on duty within
that area which requires absence from the officer's
headquarters over the usual midday meal period shall
be paid at the rate prescribed by Item 17 of Schedule

I.—Travelling, Transfer and Relieving Allowance for each meal necessarily purchased, provided that—

- (a) such travelling is not a normal feature in the performance of the officer's duties; and
- (b) such travelling is not within the suburb in which the officer resides; and
- (c) the officer's total reimbursement under this subclause for any one pay period shall not exceed the amount prescribed by Item (18) of Schedule I.—Travelling, Transfer and Relieving Allowance.

43.—WEEKEND ABSENCE FROM RESIDENCE

(1) An officer who is temporarily absent from his or her normal headquarters on relieving duty or travelling on official business outside a radius of three hundred and twenty (320) kilometres measured from the normal headquarters and is necessarily absent from his or her residence and separated from dependants, shall be granted an additional day's leave for every group of three (3) consecutive weekends so absent, provided that each weekend shall be counted as a member of only one group. Provided that—

- (a) the relief duty or travelling on official business is within Australia and the officer is not directed to work on the weekend by the Chief Executive Officer;
- (b) an additional day's leave shall not be allowed if the Chief Executive Officer has approved the officer's dependants accompanying the officer during the period of relief or travelling;
- (c) additional leave under this subclause shall be commenced within one (1) month of the period of relief duty or travelling being completed unless the Chief Executive Officer approves otherwise;
- (d) the annual leave loading provided by Clause 19.—Annual Leave of this Award shall not apply to any leave entitlements under this clause.

(2) Officers who are temporarily absent from their normal headquarters on relieving duty or travelling on official business outside a radius of three hundred and twenty (320) and up to four hundred (400) kilometres measured from the normal headquarters, may elect to have the benefit of concessions provided by subclause (3) of this clause in lieu of those provided by subclause (1) of this clause. Kalgoorlie, Albany and Geraldton shall be regarded as being within a radius of four hundred (400) kilometres for the purpose of this subclause in the case of an officer resident in the Metropolitan Area.

(3) Officers who are temporarily absent from their normal headquarters on relieving duty or travelling on official business within a radius of three hundred and twenty (320) kilometres measured from the officer's headquarters, and such relief duty or travel would normally necessitate the officer being absent from his or her residence for a weekend, shall be allowed to return to such residence for the weekend. Provided that—

- (a) An officer who is directed to work on a weekend by the Chief Executive Officer shall not be entitled to the concessions;
- (b) All travelling to and from the officer's residence shall be undertaken outside of the hours of duty prescribed by Clause 16.—Hours.
- (c) An officer who has obtained the approval of the Chief Executive Officer for dependants to accompany the officer during the period of relief or travelling shall not be entitled to the concessions provided by this subclause;
- (d) When an officer is authorised by the Chief Executive Officer to use his or her own motor vehicle to travel to the locality where the relief duty is being performed or when travelling on official business the officer shall be reimbursed on the basis of one half (½) of the appropriate rate prescribed by subclause (3) of Clause 35.—Motor Vehicle Allowance of this Award for the journey to the officer's residence for

the weekend and the return to the place of relief duty: Provided that the maximum amount of reimbursement shall not exceed the cost of the rail or bus fare by public conveyance which otherwise would be utilised for such journey and payment shall be made only to the owner of such vehicle;

- (e) When an officer has been authorised by the Chief Executive Officer to use a government motor vehicle in connection with the relief duty or travelling on official business, the officer shall be allowed to use that vehicle for the purpose of returning to his or her residence for the weekend;
- (f) An officer who does not use his or her own vehicle or a government motor vehicle as provided by paragraphs (d) and (e) of this subclause, shall be reimbursed the cost of the fare by public conveyance by road or rail for the journey to and from the officer's residence for the weekend;
- (g) An officer who does not make use of the provision of this subclause shall be paid travelling allowance or relieving allowance as the case may require in accordance with the provisions of Clause 38.—Relieving Allowance or Clause 42.—Travelling Allowance of this Award.
- (h) Officers who return to their residence for the weekend in accordance with the provisions of this subclause shall not be entitled to the reimbursement of any expenses allowed by Clause 38.—Relieving Allowance and Clause 42.—Travelling Allowance of this Award during the period from the time when the officer returns to his or her residence to the time of departing from such residence to travel to resume duty at the place away from the residence.

44.—PRESERVATION OF RIGHTS

As a result of this Order, nothing herein contained shall in itself operate so as to detrimentally alter the conditions of employment or salary that is the minimum prescribed in this Award or any benefit superior to any contained herein.

45.—TIME AND SALARIES RECORD

(1) The employer shall keep or cause to be kept a time and salaries record showing—

- (a) the name of each officer;
- (b) the nature of the work performed;
- (c) the hours worked each day;
- (d) the salary, allowances and overtime paid to each officer.

Any system of automatic recording by means of machines shall be deemed to comply with the provision to the extent of the information recorded.

(2) (a) The time and salary record shall on demand be produced for inspection by the General Secretary or duly accredited official of the Association during the employer's usual office hours and when necessary the duly accredited official of the Association may take a copy of the record.

(b) The Association shall—

- (i) give prior notification to the employer on when it proposes to inspect the record;
- (ii) not conduct interviews during normal working hours in circumstances which will result in the employer's business being unduly interrupted or otherwise hampered; and
- (iii) treat with confidentiality any information obtained from time and salary records.

(c) The employer's office shall be deemed to be a convenient place for the purposes of inspecting records and if for any reason the time and salary record is not available when the duly accredited official of the Association calls to inspect it, the record will be made available for inspection at a mutually convenient time at the employer's office.

(d) If the employer maintains a personal or other file on an employee subject to the employer's convenience, the employee shall be entitled to examine all material maintained on that file.

46.—NOTIFICATION OF CHANGE

(1) (a) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on officers, the employer shall notify the officers who may be affected by the proposed changes and the Association.

(b) For the purpose of this clause "significant effects" include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of officers to other work or locations and restructuring of jobs.

Provided that where this Award or any other Award or Agreement makes provision for alteration of any of the matters referred to in this clause an alteration shall be deemed not to have significant effect.

(2) (a) The employer shall discuss with the officers affected and the Association, inter alia, the introduction of the changes referred to in subclause (1) of this clause, the effects the changes are likely to have on officers, measures to avert or mitigate the adverse effects of such changes on officers and shall give prompt consideration to matters raised by the officers and/or the Association in relation to the changes.

(b) The discussion shall commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in subclause (1) of this clause, unless by prior arrangement, the Association is represented on the body formulating recommendations for change to be considered by the employer.

(c) For the purposes of such discussion an employer shall provide to the officers concerned and the Association all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on officers and any other matters likely to affect officers. Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be inimical to the employer's interests.

47.—RIGHT OF ENTRY

The General Secretary of the Association or a duly authorised representative shall on notification to the employer have the right to enter the employer's premises during working hours, including meal breaks, for the purpose of discussing with officers covered by this Award, the legitimate business of the Association or for the purpose of investigating complaints concerning the application of this Award, but shall in no way unduly interfere with the work of officers.

48.—COPIES OF AWARD

Every officer shall be entitled to have access to a copy of this Award. Sufficient copies shall be made available by the employer for this purpose.

49.—ESTABLISHMENT OF CONSULTATIVE MECHANISMS

The parties to this award or agreement are required to establish a consultative mechanism/s and procedures appropriate to their size, structure and needs, for consultation and negotiation on matters affecting the efficiency and productivity of the Public Sector.

50.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of the Award so that it provides for more flexible and efficient working arrangements, enhances productivity, improves the

quality of working life, skills and job satisfaction and assists positively in the restructuring process.

(2) In conjunction with testing the current Award/Agreement structure the Parties are prepared to discuss all matters raised by the Parties for increased flexibility and efficiency. As such, any discussions between the Parties must be premised on the understanding that—

- (a) the majority of employees employed in the section, branch or division must genuinely agree;
- (b) no employee will suffer a reduction in ordinary earnings as a result of the change;
- (c) the Association must be party to the agreement, in particular, where the employees at any section, branch or division are holding discussions which would require any award variation. The Association shall be invited to participate;
- (d) the Association shall not unreasonably oppose any agreement;
- (e) subject to the provision of this award, any agreement reached may require ratification by the Commission.

(3) Should an agreement be reached pursuant to subclause (2) of this clause and that agreement requires an award variation, no party will oppose the award variation.

(4) There shall be no limitation on any award matter being raised for discussion.

51.—SPECIAL CONDITIONS

Nothing in this Award shall be construed so as to take away from the Association the right to make a claim in respect of a specific occupational group covered by this Award.

52.—TRANSITION

For the purposes of this clause "this agreement" shall mean the Public Services Salaries Agreement 1985.

- (a) Maintenance of Salary—

Where an Officer's position is downgraded or the maximum salary is reduced as a result of the introduction of this Agreement, the following shall apply—

"All Officers appointed to a classification or level prior to the date of implementation of this Agreement, will progress through the salary ranges (as adjusted by general salary movements) applicable to that classification or level irrespective of the level determined by the position data form."

- (b) Placement of Officers—

- (i) Officers classified C-IV prior to the operation of this Agreement shall maintain their existing salary and incremental date under this Agreement.
- (ii) Officers classified C-V or C-VI prior to the operation of this Agreement shall be classified level 1 under this Agreement on the following basis—

- (a) Under 21 years of age—age to age.
- (b) Officers 21 years of age and older—salary on promotion.

- (iii) Officers who are not qualified for promotion and whose salary ranges prior to the operation of this Agreement were in excess of the 24 year old rate of Salary for level 1 under this Agreement shall be entitled to progress through the level 1 range. Provided that this provision shall also apply to officers classified C-III-1 prior to the date of operation of this Agreement.

- (c) Service Allowance—

Officers classified C-IV and C-II-1 prior to the operation of this Agreement shall be entitled to progress

to the first two points of level 2 under this Agreement in accordance with the provisions of Clauses 7(b), 9(d) (e) and (f) of the Public Service Administrative and Clerical Divisions Salaries Award 1982 No. 1 of 1982.

(d) Efficiency and Personal Allowances—

Officers in receipt of efficiency and personal allowances at the date of operation of this Agreement shall have the allowances included as salary when determining placement under this Agreement.

(e) Qualification Allowance—

- (i) Officers in receipt of a qualifications allowance at the date of operation of this Agreement or who would have become entitled to such allowance, or increase in such allowance, pursuant to the provisions contained in Clause 13 of the Public Service Administrative and Clerical Divisions Salaries Award 1982, No. 1 of 1982, as a result of studies completed in the 1985 calendar year, shall continue to receive or be granted such allowance, or increase in allowance provided that such allowance shall be reduced or ceased in accordance with the following—

	Annual Allowance Diplomates	Annual Allowance Graduates and Associates
	\$	\$
Up to and including Level 3, min	200	300
Level 3, 2nd and 3rd increments	100	200
Level 3 max	Nil	100
Level 4 and above	Nil	Nil

- (ii) Officers who are not entitled to a qualification allowance pursuant to subparagraph (i) of this Subclause or who attain a higher qualification subsequently shall not be entitled to receive an allowance or increase in the allowance.

(f) Officer Supporting Dependents Allowance—

- (i) Officers previously classified C-IV, G-VII, G-X or, G-XIII who were in receipt of an allowance of one increment for wholly or substantially supporting a spouse and/or dependent relatives prior to the date of operation of this Agreement shall, if classified Level 1 under this Agreement, continue to receive such allowance of one increment whilst wholly or substantially supporting a spouse and/or dependent relative. Provided that the maximum remuneration inclusive of such allowance shall be the rate of pay at age 29 or ninth year of adult service in respect of an officer who is deemed qualified for promotion by the Commission or, age 24 or fourth year of adult service in respect of officers not deemed qualified for promotion.
- (ii) Payment of the Officer Supporting Dependents Allowance shall cease should an officer be promoted or reclassified above level 1.
- (iii) This provision shall not apply to any officer who was not in receipt of the Officer Supporting Dependents Allowance at the operative date of this Agreement.

(g) Higher Duties—

- (i) Officers classified CIV, who were acting in a C- II-1 position immediately prior to the date of operation of this Agreement, and who had been so acting for in excess of twelve (12) months in the preceding eighteen (18) months, shall be deemed appointed to that level, provided that the position has not been advertised and/or is the subject of a Promotion Appeal.
- (ii) Where an officer was acting in a position classified higher than his/her substantive position prior to the introduction of this Agreement and

who continued to act in the same position at the operative date of this Agreement, the officer shall receive higher duties allowance equivalent to the salary that would have been payable to the permanent occupant.

Provided that should the officer cease to act in that higher classified position, any future periods of acting in the same position or other positions classified higher than the officer's substantive classification shall be paid a higher duties allowance in accordance with Clause 4 (f) of the Public Service Allowance (Higher Duties) Award 1981.

(h) Incremental Dates—

- (i) Where an Officer is in receipt of a salary that equates to a salary under this Agreement and the officer is classified at that level, the officer will remain on that salary and retain his/her current incremental date.
- (ii) An officer in receipt of a salary which does not equate to a salary under this Agreement shall be placed on the nearest salary point higher at the date of operation of this Agreement, which shall become the officer's new incremental date.

(i) Drafting and Library Assistants—

- (i) Drafting Assistants employed prior to the date of operation of this Agreement shall be placed at the same or nearest salary point higher in level 1 or 2 under this Agreement. Provided that all Drafting Assistants employed prior to the date of operation of this Agreement shall be allowed to progress to the first two increments of Level 2 under this Agreement subject to the provisions of Regulation 5 of the Public Service Act 1978—1985 without the need for qualifications.

This provision shall not apply to Officers appointed on or after the operative date of this Agreement.

- (ii) Library Assistants employed prior to the date of operation of this Agreement shall be placed at the same or nearest salary point higher in level 1 or 2 under this Agreement. Provided that all Library Assistants employed prior to the date of operation of this Agreement shall be allowed to progress to the first increment of level 2 under this Agreement subject to the provisions of Regulation 5 of the Public Service Act 1978—1985, without the need for qualifications.

This provision shall not apply to Officers appointed on or after the operative date of this Agreement.

(j) Draftsperson—

- (i) An Architectural and Engineering Draftsperson employed prior to the operation of this Agreement who holds an appropriate Diploma or equivalent qualification approved by the Commission shall, where relevant, upon becoming entitled to progression to the Eighth year increment of the Level 2/3 under this Agreement, be advanced to the maximum of the Level 2/3 under this Agreement.

This provision shall not apply to officers appointed on or after the operative date of this Agreement.

- (ii) A Draftsperson (Architectural and Engineering, or, Cartographic) employed prior to the operative date of this Agreement at level 1, shall be placed at the same or nearest salary point higher in the level 2/3 under this Agreement. Provided that such officers shall be allowed to progress to the first increment of Level 4 under this Agreement.

This provision shall not apply to officers appointed on or after the operative date of this Agreement.

53.—ALLOWANCES

(1) Except as provided for in paragraph (5)(b) of Clause 11.—Salaries Specialised Callings of this Award and subject to the provisions of Clause 52.—Transition of this Award no qualifications, service, efficiency, personal or officer supporting dependent allowances shall be approved on or after the date of this Award.

(2) The provisions of subclause (1) of this clause shall not prohibit the Commissioner from granting special allowances based on additional duties and responsibilities undertaken by an officer due to expertise and knowledge of the officer.

54.—ADJUSTMENT OF SALARIES

The salary rates expressed in this Award shall be varied to the extent necessary to give effect to any decision of the Western Australian Industrial Relations Commission in a State Wage Case made during the currency of this Agreement and expressed to be on general economic grounds and which has general application.

55.—AMALGAMATION OF SALARY CLASSES

In allocating salaries or salary ranges in accordance with Section 14 of the Public Service Act the Commissioner may amalgamate any two or more levels or, allocate specific salary points from a level or levels prescribed by this Agreement.

56.—LEAVE FOR INTERNATIONAL SPORTING EVENTS

(1) Special leave with pay may be granted by the chief executive officer to an officer chosen to represent Australia as a competitor or official, at a sporting event which meets the following criteria—

- (a) it is a recognised international amateur sport of national significance; or
- (b) it is a world or international regional competition; and
- (c) no contribution is made by the sporting organisation towards the normal salary of the employee.

(2) The chief executive officer shall make enquiries with the Ministry of Sport and Recreation—

- (a) whether the application meets the above criteria;
- (b) the period of leave to be granted.

57.—WITNESS AND JURY SERVICE

WITNESS

(1) An officer subpoenaed or called as a witness to give evidence in any proceeding shall as soon as practicable notify the manager/supervisor who shall notify the chief executive officer.

(2) Where an officer is subpoenaed or called as a witness to give evidence in an official capacity that officer shall be granted by the chief executive officer leave of absence with pay, but only for such period as is required to enable the officer to carry out duties related to being a witness. If the officer is on any form of paid leave, the leave involved in being a witness will be reinstated, subject to the satisfaction of the chief executive officer. The officer is not entitled to retain any witness fee but shall pay all fees received into Consolidated Revenue Fund. The receipt for such payment with a voucher showing the amount of fees received shall be forwarded to the chief executive officer.

(3) An officer subpoenaed or called as a witness to give evidence in an official capacity shall, in the event of non-payment of the proper witness fees or travelling expenses as soon as practicable after the default, notify the chief executive officer.

(4) An officer subpoenaed or called as a witness on behalf of the Crown, not in an official capacity shall be granted leave

with full pay entitlements. If the officer is on any form of paid leave, this leave shall not be reinstated as such witness service is deemed to be part of the officer's civic duty. The officer is not entitled to retain any witness fees but shall pay all fees received into Consolidated Revenue Fund.

(5) An employee subpoenaed or called as a witness under any other circumstances other than specified in subclauses (2) and (4) of this clause shall be granted leave of absence without pay except when the employee makes an application to clear accrued leave in accordance with award provisions.

JURY

(6) An officer required to serve on a jury shall as soon as practicable after being summoned to serve, notify the supervisor/manager who shall notify the chief executive officer.

(7) An officer required to serve on a jury shall be granted by the chief executive officer leave of absence on full pay, but only for such period as is required to enable the officer to carry out duties as a juror.

(8) An officer granted leave of absence on full pay as prescribed in subclause 6 of this clause is not entitled to retain any juror's fees but shall pay all fees received into Consolidated Revenue Fund. The receipt for such payment shall be forwarded with a voucher showing the amount of juror's fees received to the chief executive officer.

58.—LIBERTY TO APPLY

Liberty is reserved to the parties to apply to amend this award in respect to the following matters—

- (i) Overtime
- (ii) Casual Employment
- (iii) Parental Leave
- (iv) Annual Leave
- (v) All Allowances
- (vi) Long Service Leave
- (vii) Permanent Part-Time Employment
- (viii) Annual Increments
- (xi) Hours
- (x) Study Leave

SCHEDULE A—SALARIES

Annual salaries applicable to officers covered by this award—

LEVEL	SALARY PER ANNUM \$	1ST, 2ND & 3RD ARBITRATED SAFETY NET ADJUSTMENT \$	TOTAL SALARY PER ANNUM \$
Level 1			
Under 17 years	10,445	642	11,087
17 years	12,207	750	12,957
18 years	14,238	876	15,114
19 years	16,481	1,014	17,495
20 years	18,507	1,140	19,647
1.1	20,331	1,251	21,582
1.2	20,983	1,251	22,234
1.3	21,634	1,251	22,885
1.4	22,281	1,251	23,532
1.5	22,932	1,251	24,183
1.6	23,583	1,251	24,834
1.7	24,332	1,251	25,583
1.8	24,850	1,251	26,101
1.9	25,616	1,251	26,867
Level 2			
2.1	26,533	1,251	27,784
2.2	27,236	1,251	28,487
2.3	27,975	1,251	29,226
2.4	28,756	1,251	30,007
2.5	29,573	1,251	30,824
Level 3			
3.1	30,696	1,251	31,947
3.2	31,571	1,251	32,822
3.3	32,473	1,251	33,724
3.4	33,399	1,251	34,650

LEVEL	SALARY PER ANNUM \$	1ST, 2ND & 3RD ARBITRATED SAFETY NET ADJUSTMENT \$	TOTAL SALARY PER ANNUM \$
Level 4			
4.1	34,669	1,251	35,920
4.2	35,664	1,251	36,915
4.3	36,688	1,251	37,939
Level 5			
5.1	38,660	1,251	39,911
5.2	39,993	1,251	41,244
5.3	41,378	1,251	42,629
5.4	42,815	1,251	44,066
Level 6			
6.1	45,126	1,251	46,377
6.2	46,697	1,251	47,948
6.3	48,323	1,251	49,574
6.4	50,059	1,251	51,310
Level 7			
7.1	52,721	1,251	53,972
7.2	54,563	1,251	55,814
7.3	56,567	1,251	57,818
Level 8			
8.1	59,824	1,251	61,075
8.2	62,157	1,251	63,408
8.3	65,050	1,251	66,301
Level 9			
9.1	68,663	1,251	69,914
9.2	71,104	1,251	72,355
9.3	73,888	1,251	75,139
Class 1	78,098	1,251	79,349
Class 2	82,308	1,251	83,559
Class 3	86,516	1,251	87,767
Class 4	90,726	1,251	91,977

SCHEDULE B—SALARIES—SPECIFIED CALLINGS

Officers, who possess a relevant tertiary level qualification, or equivalent determined by the employer, and who are employed in the callings of Agricultural Scientist, Architect, Architectural Graduate, Community Corrections Officer, Dental Officer, Dietitian, Educational Officer, Engineer, Geologist, Laboratory Technologist, Land Surveyor, Legal Officer, Librarian, Medical Officer, Pharmacist, Planning Officer, Podiatrist, Psychiatrist, Clinical Psychologist, Psychologist, Quantity Surveyor, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Scientific Officer, Social Worker, Superintendent of Education, Therapist (Occupational, Physio or Speech), Veterinary Scientist, or any other professional calling determined by the employer, shall be entitled to annual salaries as follows—

LEVEL	SALARY PER ANNUM \$	ARBITRATED SAFETY NET ADJUSTMENT \$	TOTAL SALARY PER ANNUM \$
Level 2/4			
1st year	26,533	1,251	27,784
2nd year	27,975	1,251	29,226
3rd year	29,573	1,251	30,824
4th year	31,571	1,251	32,822
5th year	34,669	1,251	35,920
6th year	36,688	1,251	37,939
Level 5			
1st year	38,660	1,251	39,911
2nd year	39,993	1,251	41,244
3rd year	41,378	1,251	42,629
4th year	42,815	1,251	44,066
Level 6			
1st year	45,126	1,251	46,377
2nd year	46,697	1,251	47,948
3rd year	48,323	1,251	49,574
4th year	50,059	1,251	51,310
Level 7			
1st year	52,721	1,251	53,972
2nd year	54,563	1,251	55,814
3rd year	56,567	1,251	57,818
Level 8			
1st year	59,824	1,251	61,075
2nd year	62,157	1,251	63,408
3rd year	65,050	1,251	66,301

LEVEL	SALARY PER ANNUM \$	ARBITRATED SAFETY NET ADJUSTMENT \$	TOTAL SALARY PER ANNUM \$
Level 9			
1st year	68,663	1,251	69,914
2nd year	71,104	1,251	72,355
3rd year	73,888	1,251	75,139
Class 1	78,098	1,251	79,349
Class 2	82,308	1,251	83,559
Class 3	86,516	1,251	87,767
Class 4	90,726	1,251	91,977

SCHEDULE C
CAMPING ALLOWANCE

South of 26° South Latitude			RATE PER DAY
ITEM			\$
1.	Permanent Camp -	Cook provided by the Department	23.05
2.	Permanent Camp -	No cook provided by the Department	30.75
3.	Other Camping -	Cook provided by the Department	38.45
4.	Other Camping -	No cook provided	46.15
North of 26° South Latitude			RATE PER DAY
ITEM			\$
1.	Permanent Camp -	Cook provided by the Department	26.70
2.	Permanent Camp -	No cook provided by the Department	34.35
3.	Other Camping -	Cook provided by the Department	42.05
4.	Other Camping -	No cook provided	49.75

SCHEDULE D—DISTRICT ALLOWANCE

(a) Officers Without Dependents (paragraph 31(3)(a))—

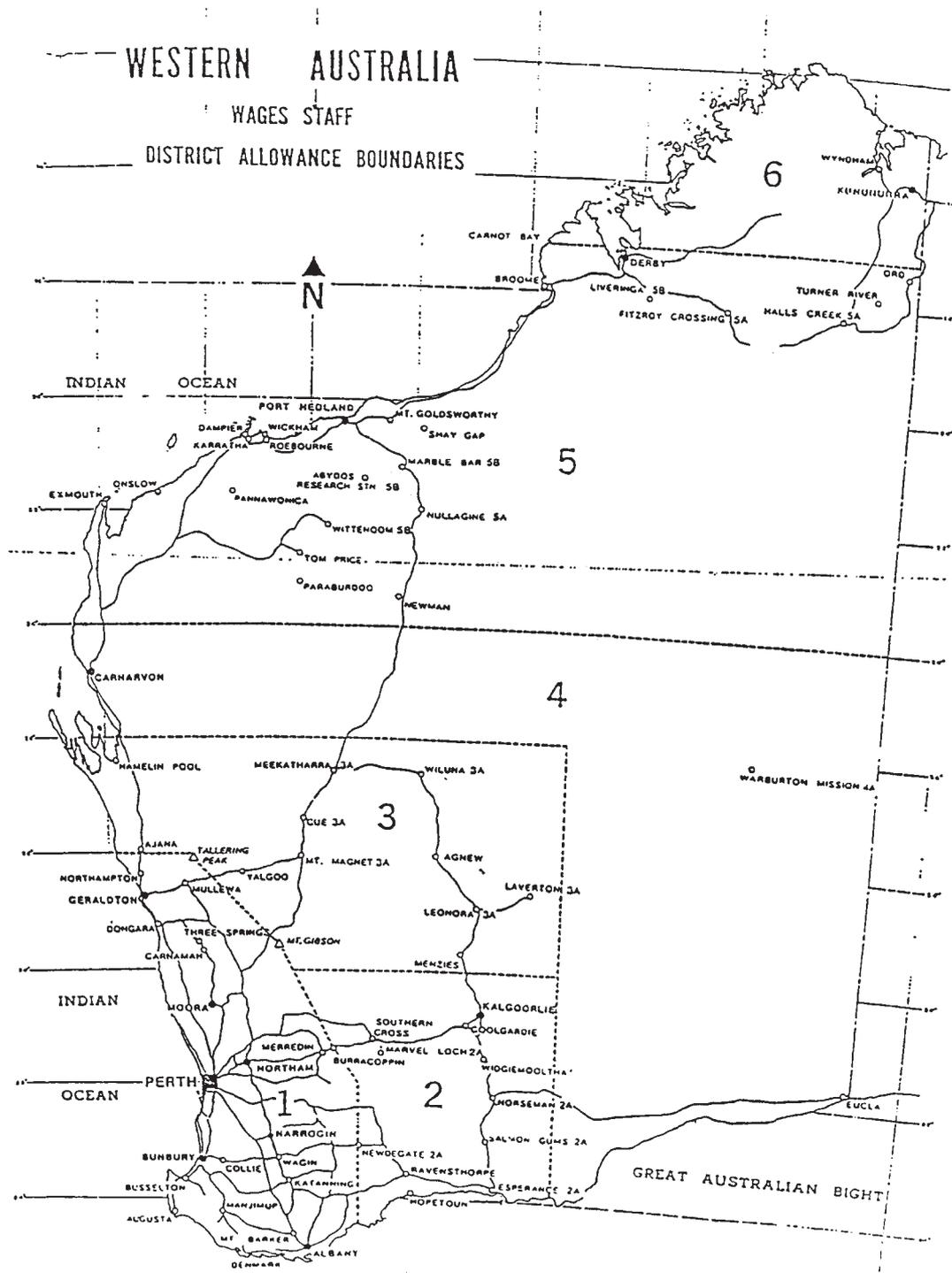
COLUMN I	COLUMN II	COLUMN III	COLUMN IV
District No	Standard Rate \$ p.a.	Exceptions to Standard Rate Town or Place	Rate \$ p.a.
6	2,627	Nil	Nil
5	2,149	Fitzroy Crossing Halls Creek Turner River Camp Nullagine Liveringa (Camballin) Marble Bar Wittenoom	2,893
		Karratha	2,531
		Port Hedland	2,355
4	1,082	Warburton Mission Carnarvon	2,911
3	683	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	1,020
2	489	Kalgoorlie Boulder Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	1,082
1	Nil	Nil	163
			646
			Nil

(b) Officers With Dependents (paragraph 31(3)(b))

Double the appropriate rate as prescribed in (a) above for Officers without dependents.

The allowances prescribed in this Schedule shall operate from the beginning of the first pay period commencing on or after January 1, 1991.

SCHEDULE D—DISTRICT ALLOWANCE

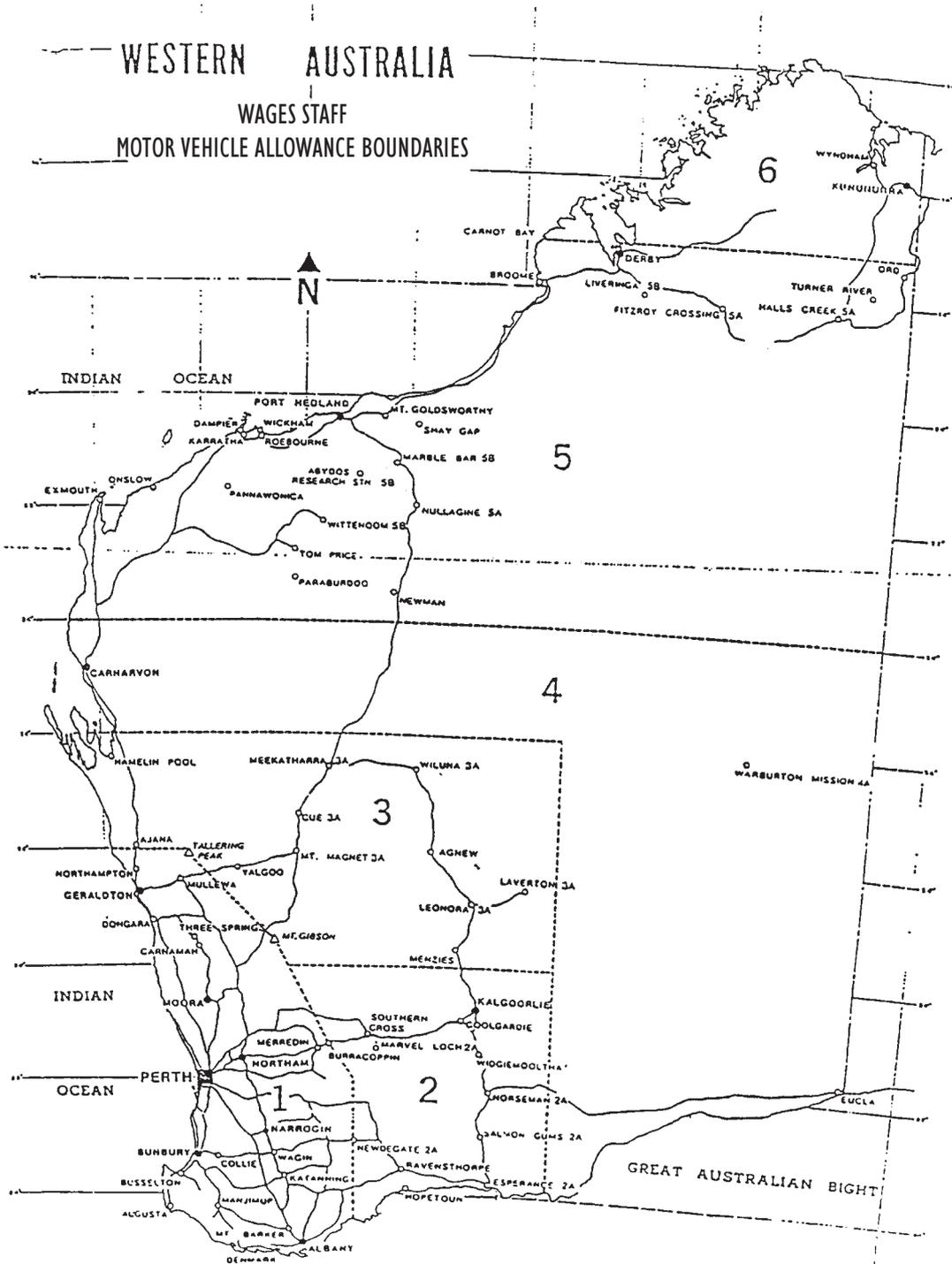


SCHEDULE E—MOTOR VEHICLE ALLOWANCE

AS FROM 1 JULY 1991

AREA AND DETAILS	ENGINE DISPLACEMENT (IN CUBIC CENTIMETRES)			OVER 8000 up to 16000 kms	OVER 16000 kms	1600cc & UNDER 2600cc
	OVER 2600cc	OVER 1600cc	1600cc & UNDER 2600cc			
Metropolitan Area						
First 4000 kilometres	103.5	90.8	77.4	25.3	22.5	20.3
Over 4000 up to 8000 kms	44.5	39.2	34.3	27.1	23.9	21.3
Over 8000 up to 16000 kms	24.8	22.0	19.9			
Over 16000 kms	26.9	23.7	21.1			
				<u>North of 23.5o South Latitude</u>		
First 4000 kilometres				119.1	105.4	90.4
Over 4000 up to 8000 kms				50.5	44.9	39.2
Over 8000 up to 16000 kms				27.7	24.7	22.2
Over 16000 kilometres				28.1	24.9	22.1
				<u>Rest of State</u>		
First 4000 kilometres				109.4	96.2	82.1
Over 4000 up to 8000 kms				47.0	41.4	36.3
Over 8000 up to 16000 kms	105.9	93.3	79.8	26.2	23.2	21.0
Over 4000 up to 8000 kms	45.5	40.2	35.2	27.6	24.3	21.7

SCHEDULE E—MOTOR VEHICLE ALLOWANCE



SCHEDULE F—MOTOR VEHICLE ALLOWANCE

AS FROM JULY 1, 1991

AREA AND DETAILS	ENGINE DISPLACEMENT (IN CUBIC CENTIMETRES)		
	OVER 2600cc	OVER 1600cc & UNDER 2600cc	1600cc & UNDER
Metropolitan Area	49.4	43.5	37.9
South West Land Division	50.5	44.6	38.9
North of 23.5o South Latitude	56.2	50.0	43.5
Rest of the State	52.2	46.0	40.0

SCHEDULE G—MOTOR CYCLE ALLOWANCE

AS FROM JULY 1, 1991

Distance Travelled During A Year on Official Business	Rate Cents per Kilometre
Rate per kilometre	17.1

SCHEDULE H.—OVERTIME

PART I—OUT OF HOURS CONTACT

(Operative from 1st pay period on or after 10/7/96)

Standby	\$5.33 per hour
On Call	\$2.66 per hour
Availability	\$1.33 per hour

PART II—MEALS

(Operative from the first pay period commencing on or from 1st July 1997)

Breakfast	\$6.50 per meal
Lunch	\$8.00 per meal
Evening Meal	\$9.60 per meal
Supper	\$6.50 per meal

SCHEDULE I

TRAVELLING, TRANSFER AND RELIEVING
ALLOWANCE

Item	Particulars	COLUMN A Daily Rate	COLUMN B Daily Rate Officers With Dependants: Relieving Allowance for Period in Excess of 42 Days (Clause 38(2)(b)) Transfer Allowance for Period in Excess of Prescribed Period (Clause 41(3))	COLUMN C Daily Rate Officers Without Dependants: Relieving Allowance for Period in Excess of 42 Days (Clause 38(2)(b))
(1)	W.A.—South of 26° South Latitude	8.40		
(2)	W.A.—North of 26° South Latitude	9.55		
(3)	Interstate	9.55		

ALLOWANCE TO MEET INCIDENTAL EXPENSES

Item	Particulars	COLUMN A Daily Rate	COLUMN B Daily Rate Officers With Dependants: Relieving Allowance for Period in Excess of 42 Days (Clause 38(2)(b)) Transfer Allowance for Period in Excess of Prescribed Period (Clause 41(3))	COLUMN C Daily Rate Officers Without Dependants: Relieving Allowance for Period in Excess of 42 Days (Clause 38(2)(b))
(4)	W.A.—Metropolitan Hotel or Motel	149.55	74.75	49.80
(5)	Locality South of 26° South Latitude	120.65	60.35	40.20
(6)	Locality North of 26° South Latitude—			
	Broome	191.30	95.65	63.70
	Carnarvon	120.60	60.30	40.15
	Dampier	138.55	69.25	46.15
	Derby	132.55	66.25	44.15
	Exmouth	142.55	71.25	47.45
	Fitzroy Crossing	158.80	79.40	52.90
	Gascoyne Junction	94.55	47.25	31.50
	Halls Creek	163.55	81.75	54.45
	Karratha	180.00	90.00	59.95
	Kununurra	157.55	78.75	52.45
	Marble Bar	119.55	59.75	39.80
	Newman	184.55	92.25	61.45
	Nullagine	106.50	53.25	35.45
	Onslow	95.55	47.75	31.80
	Pannawonica	120.55	60.25	40.15
	Paraburdoo	197.55	98.75	65.80
	Port Hedland	188.90	94.45	62.90

Item	Particulars	COLUMN A Daily Rate	COLUMN B Daily Rate Officers With Dependants: Relieving Allowance for Period in Excess of 42 Days (Clause 38(2)(b)) Transfer Allowance for Period in Excess of Prescribed Period (Clause 41(3))	COLUMN C Daily Rate Officers Without Dependants: Relieving Allowance for Period in Excess of 42 Days (Clause 38(2)(b))
	Roebourne	\$ 86.55	\$ 43.25	\$ 28.80
	Sandfire	88.55	44.25	29.50
	Shark Bay	122.75	61.35	40.85
	Tom Price	152.55	76.25	50.80
	Turkey Creek	93.55	46.75	31.15
	Wickham	129.55	64.75	43.15
	Wyndham	111.55	55.75	37.15

(7)	Interstate— Capital City			
	Sydney	170.25	85.15	56.70
	Melbourne	160.25	80.15	53.35
	Other Capitals	151.40	75.70	50.40
(8)	Interstate—Other than Capital City	120.65	60.35	40.20

(9)	W.A.—South of 26° South Latitude	53.10		
(10)	W.A.—North of 26° South Latitude	60.30		
(11)	Interstate	60.30		

ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A
HOTEL OR MOTEL

(12)	W.A.—South of 26° South Latitude—			
	Breakfast	10.15		
	Lunch	10.15		
	Dinner	24.40		
(13)	W.A.—North of 26° South Latitude—			
	Breakfast	11.50		
	Lunch	14.40		
	Dinner	24.90		
(14)	INTERSTATE			
	Breakfast	11.50		
	Lunch	14.40		
	Dinner	24.90		

TRAVEL NOT INVOLVING AN OVERNIGHT STAY, OR TRAVEL INVOLVING
AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED

(15)	W.A.—South of 26° South Latitude—			
	Breakfast	10.15		
	Lunch	10.15		
	Dinner	24.40		
(16)	W.A.—North of 26° South Latitude—			
	Breakfast	11.50		
	Lunch	14.40		
	Dinner	24.90		
(17)	INTERSTATE			
	Breakfast	11.50		
	Lunch	14.40		
	Dinner	24.90		

DEDUCTION FOR NORMAL LIVING EXPENSES (CLAUSE 41(5)(a))

(15)	Each Adult	18.25
(16)	Each Child	3.15

MIDDAY MEAL (CLAUSE 42(11))

(17)	Rate per meal	4.40
(18)	Maximum reimbursement per pay period	22.10

SCHEDULE J—SHIFT WORK ALLOWANCE

A shift work allowance of \$12.26 is payable for each after-
noon or night shift of seven and one half (7.5) hours worked.SCHEDULE K—DIVING, FLYING AND SEAGOING
ALLOWANCES

(1) Diving—(Clause 33)

\$4.15 per hour or part thereof.

(2) Flying—(Clause 34)

(a) Observation and photographic duties in fixed wing
aircraft—\$7.65 per hour or part thereof.(b) Cloud seeding and fire bombing duties, observation and
photographic duties involving operations in which fixed
wing aircraft are used at heights less than 304 metres or
in unpressurised aircraft at heights more than 3048 me-
tres—\$10.50 per hour or part thereof.(c) When required to fly in a helicopter on fire bombing
duties, observation and photographic duties or stock
surveillance—\$14.50 per hour or part thereof.

(3) Sea Going Allowances (Clause 40)

(a) Victualling

(i) Government Vessel—meals on board not pre-
pared by cook—\$19.55 per day.(ii) Government Vessel—meals on board are pre-
pared by a cook—\$14.70 per day.(iii) Non Government Vessel—\$17.80 each over-
night period.

- (b) Hard Living Allowance—41 cents per hour or part thereof.

SCHEDULE L—NAMED PARTIES

The Civil Service Association of Western Australia Incorporated.

Commissioner, Aboriginal Affairs
 Director General, Agriculture Western Australia
 Executive Director, Department of the Arts
 Auditor General for WA, Office of the Auditor General
 Executive Director, Contract and Management Services
 Chief Executive Officer, Department of Commerce and Trade
 Executive Director, Department of Conservation and Land Management
 Chief Executive Officer, Disability Services Commission
 Director General, Education Department of WA
 Commissioner, WA Electoral Commission
 Chief Executive Officer, Department of Environmental Protection
 Commissioner, Equal Opportunity Commission
 Director General, Family and Children's Services
 Executive Director, Ministry of Fair Trading
 Executive Director, Fisheries Department
 Chief Executive Officer, Gascoyne Development Commission
 Board of Trustees, Government Employees Superannuation Board
 Chief Executive Officer, Goldfields-Esperance Development Commission
 Chief Executive Officer, Great Southern Development Commission
 Commissioner, Health Department of Western Australia
 Director, Office of Health Services Review
 Executive Director, Homeswest
 Registrar, WA Industrial Relations Commission
 Information Commissioner, Office of the Information Commissioner
 Director General, Ministry of Justice
 Chief Executive Officer, Kimberley Development Commission
 Chief Executive Officer, Department of Land Administration
 Executive Director, Department of Local Government
 Chief Executive Officer, Mid-West Development Commission
 Director General, Department of Minerals and Energy
 Director of Public Prosecutions for WA, Office of the Director Public Prosecutions
 Chief Executive Officer, Peel Development Commission
 Chief Executive Officer, Pilbara Development Commission
 Chief Executive Officer, Ministry of Planning
 Chief Executive Officer, Police Department
 Chief Executive Officer, Department of Productivity and Labour Relations
 Director General, Ministry of Premier and Cabinet
 Chief Executive Officer, Department of Resources Development
 Chief Executive Officer, South West Development Commission
 Executive Director, Ministry of Sport and Recreation
 Commissioner, State Revenue Department
 Chief Executive, WA Department of Training
 Director General, Department of Transport
 Under Treasurer, Department of Treasury
 Valuer General, Valuer General's Office
 Chief Executive Officer, Water and Rivers Commission
 Executive Director, Workcover WA
 Commissioner, Worksafe Western Australia
 Chief Executive Officer, Wheatbelt Development Commission

THE TRANSPORT TRUST SALARIED OFFICERS' AWARD No. 3 of 1977.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 12th day of August, 1997.

J. SPURLING.
 Registrar.

"The Transport Trust Salaried Officers' Award No. 3 of 1977"

1.—TITLE

This Award shall be known as "The Transport Trust Salaried Officers' Award No. 3 of 1977" and replaces Award No. 6 of 1973.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
- 1A Statement of Principles—August 1996
2. Arrangement
3. Area of Operation
4. Scope
5. Term of Award
6. Definitions
7. Contract of Service
8. Certificate of Service
9. Part Time Employment
10. Salaries and Salary Ranges
11. Salaries—Specified Callings
- 11A First and Second Arbitrated Safety Net Adjustment
12. Annual Increments
13. Payment of Salaries
14. Higher Duties Allowance
15. Deduction of Union Subscriptions
16. Hours
17. Shift Work
18. Overtime
19. Annual Leave
20. Public Holidays
21. Long Service Leave
22. Sick Leave
23. Maternity Leave
24. Leave Without Pay
25. Study Leave
26. Short Leave
27. Leave to Attend Union Business
28. Trade Union Training Leave
29. Leave for Training with the Defence Force Reserves
30. Camping Allowance
31. District Allowance
32. Disturbance Allowance
33. Diving Allowance
34. Flying Allowance
35. Motor Vehicle Allowance
36. Property Allowance
37. Protective Clothing
38. Relieving Allowance
39. Removal Allowance
40. Sea Going Allowance
41. Transfer Allowance
42. Travelling Allowance
43. Weekend Absence from Residence
44. Preservation of Rights
45. Time and Salaries Record
46. Notification of Change
47. Right of Entry
48. Copies of Award

- 49. Wage Fixing Principles
- 50. Establishment of Consultative Mechanisms
- 51. Award Modernisation
- 52. Passes
 - Schedule A—List of Respondents
 - Schedule B—Government Officers not Covered by the Scope of this Award
 - Schedule C—List of Awards/Agreements replaced by this Award
 - Schedule D—Salaries
 - Schedule E—Salaries—Specified Callings
 - Schedule F—Camping Allowance
 - Schedule G—District Allowances
 - Schedule H—Motor Vehicle Allowances
 - Schedule I—Overtime
 - Schedule J—Travelling, Transfer and Relieving Allowance
 - Schedule K—Shift Work Allowances
 - Schedule L—Other Allowances
 - Schedule M—Travel Concessions for Annual Leave
 - Schedule N—Transition Provisions (Broadbanding)

3.—AREA OF OPERATION

This Award shall have effect over that portion of the State known as the South-West Land Division.

4.—SCOPE

(1) Subject to subclause (2) of this clause, this award shall apply to all officers employed by the Metropolitan (Perth) Passenger Transport Trust excepting officers in receipt of a salary in excess of the maximum scale set out in Schedule D—Salaries and Salary Ranges and Schedule E—Salaries—Specified Callings of this Award.

(2) Except as provided in Schedule N—Transition Provisions (Broadbanding), the provisions of Clause 16.—Hours, Clause 17.—Shift Work (as it applies to shift penalty rates), and Clause 18.—Overtime, shall not apply to officers in receipt of a salary in excess of the maximum rate of Level 4.

5.—TERM OF AWARD

The term of this Award shall be for a period of two years from the beginning of the first salary period commencing after the date hereof. (Award issued on the 17th day of March 1977).

6.—DEFINITIONS

“employer” means The Metropolitan (Perth) Passenger Transport Trust, hereafter also referred to as Transperth.

“officer” means a Government officer within the meaning of the Industrial Relations Act, 1979.

“metropolitan area” means that area within a radius of 50 kilometres from the Perth City railway station.

“one working day” unless otherwise agreed between the parties to this award shall be equated to seven hours and 30 minutes except for those officers required to work a 76 hour fortnight.

“office” means a position established in the employing organisation as prescribed in Section 80X of the Industrial Relations Act, 1979.

“Union” means The Metropolitan (Perth) Passenger Transport Trust Officers’ Union of Workers, Perth.

“Board of Reference” means a Board of Reference established under the provisions of Section 48 of the Industrial Relations Act, 1979.

“headquarters” means the place in which the principal work of an officer is carried out, as defined by the employer.

“part-time employment” means regular and continuing employment for a minimum of 15 hours per week and a maximum of 30 hours per week.

“casual officer” means an officer engaged by the hour for a period not exceeding one calendar month in any period of engagement, or any officer employed as a casual on an hourly rate of pay by agreement between the Union and the employer.

“fixed term officer” means an officer who is employed on a full time or part time basis on a contract of service of specified duration.

“shift worker” is an officer who is regularly called on, continuously or on weekly rotation, to work his/her ordinary

hours or part of them, either before 7.00am or after 7.00pm for a period of not less than four weeks.

“traffic officers” shall mean those officers who are required to be on duty for the efficient operation of services and shall include those officers of the Operations Department not involved in normal clerical functions, i.e. Traffic Controller, Inspectorial Staff, Ferries Superintendent, Night Staff Supervisor, Communication Control Officers and Information Clerks (Customer Services).

“weekly duty roster” is a weekly roster indicating the five shifts to be worked in the seven day period, with an appendix showing proposed hours of duty.

“daily shift roster” indicates actual hours of duty and rostered work to be performed within those hours.

“unrostered overtime” is that overtime which an officer has not been made aware is required to be worked prior to that officer attending for duty on any day or shift as the case may be.

7.—CONTRACT OF SERVICE

(1) (a) Every officer appointed to the employ of an employer shall be on probation for a period not exceeding six months, unless otherwise determined by the employer.

However, officers appointed from the Public Sector who have at least six months’ continuous satisfactory service immediately prior to their permanent appointment will not be required to serve a probationary period.

(b) At any time during the period of probation the employer may annul the appointment and terminate the services of the officer by the giving of one week’s notice by either party or payment in lieu thereof, by either party.

(c) As soon as possible following the expiry of the period of probation the employer shall—

- (i) confirm the appointment; or
- (ii) extend the period of probation for up to six months;
- (iii) allow the probationary employment to lapse.

(d) Where the employer extends the period of probationary employment the contract of employment may be terminated as set out in paragraph (b) of this subclause.

(e) The employer may summarily dismiss an officer deemed guilty of gross misconduct or neglect of duty and the officer shall not be entitled to any notice or payment in lieu of notice.

(2) (a) No officer shall leave the employ of an employer until the expiration of one month’s written notice of the officer’s intention to do so, without the approval of the employer. An officer who fails to give the required notice shall forfeit a sum of \$500.00. Such monies may be withheld from monies due on termination.

(b) One month’s written notice shall be given by the employer to an officer whose services are no longer required. Provided that the employer may pay the officer one month’s salary in lieu of the said notice.

(c) Notwithstanding any of the other provisions contained in this clause a lesser period of notice may be negotiated between the employer and the officer.

(d) The employer may summarily dismiss an officer deemed guilty of gross misconduct or neglect of duty and the officer shall not be entitled to any notice or payment in lieu of notice.

(e) An officer, having attained the age of 55 years shall be entitled to retire from the employ of the employer.

(f) An officer who continues in the employ of the employer after attaining the age of 55 years may at any time before attaining the age of 65 years be called upon by the employer to retire and shall retire accordingly.

(g) Every officer shall retire on attaining the age of 65 years except as authorised by the employer.

(3) (a) A part-time officer shall be entitled to the same salary, leave and other conditions prescribed in this award for full-time officers, with payment for paid leave being in the proportion to which the officer’s weekly hours bear to the weekly hours of an officer engaged full time in that class of work.

(b) The provisions of paragraphs (a), (b), (c), (d) and (g) of subclause (2) of this clause shall also apply in respect to part time officers.

(4) (a) Notwithstanding the other provisions contained in this clause an employer may employ officers for a fixed term.

(b) Officers appointed for a fixed term shall be advised in writing of the terms of the appointment and such advice shall specify the dates of commencement and termination of employment.

(c) The provisions of paragraphs (a), (b), (c) and (d) of subclause (2) of this clause shall also apply in respect to fixed term officers.

8.—CERTIFICATE OF SERVICE

On the written request of an officer and prior to the officer's termination of service the employer shall provide a Certificate of Service containing full information as to the period of service and the nature of the duties performed by the officer.

9.—PART-TIME EMPLOYMENT

(1) (a) Each permanent part-time arrangement shall be confirmed by the employer in writing and should include the following specifications—

- (i) the agreed period of the arrangement; and
- (ii) the hours to be worked daily and weekly by the officer, including starting and finishing times, which shall hereinafter be referred to as "ordinary working hours".

(b) The employer shall give an officer one (1) month's notice of any proposed variation to that officer's ordinary working hours, provided that the employer shall not vary the officer's total weekly hours of duty without the officer's prior written consent, a copy of which shall be forwarded to the Union.

(c) Notwithstanding paragraph (b) of this subclause whenever agreement in writing is reached for a temporary variation to an officer's ordinary working hours—

- (i) Time worked up to 7½ hours on any day is not to be regarded as overtime but an extension of the contract hours for that day and should be paid at the normal rate of pay.
- (ii) Additional days worked, up to a total of five days per week, are also regarded as an extension of the contract and should be paid at the normal rate of pay.

(2) The provisions of Clause 18.—Overtime of this Award shall apply to all time worked outside the ordinary working hours prescribed by paragraph (b) of subclause (1) of this clause unless an arrangement pursuant to paragraph (c) of subclause (1) of this clause is in place.

(3) (a) An officer who is employed on a part-time basis shall be paid a proportion of the appropriate full-time salary dependent upon time worked. The salary shall be calculated in accordance with the following formula—

$$\frac{\text{Hours Worked Per Fortnight}}{\text{Full Time Equivalent Hours}} \times \frac{\text{Full-time Fortnightly Salary}}{1}$$

(b) An officer shall be entitled to annual increments as prescribed in Clause 12.—Annual Increments of this award.

(4) Officers are entitled to the holidays prescribed in Clause 20.—Public Holidays without variation of the officer's fortnightly salary provided the holidays occur on a day which is normally worked.

(5) An officer shall be granted leave in accordance with Clause 19.—Annual Leave of this award. Salary payable during the period of leave shall be calculated in accordance with the formula described in paragraph (a) of subclause (3) of this clause based on the fortnightly salary at the time the leave is taken. Officers shall be paid a loading as prescribed in subclause (11) of Clause 19.—Annual Leave of this award.

(6) Credits provided in Clause 22.—Sick Leave shall accrue to the officer provided that where an officer is employed for less than 75 hours per fortnight, the credits shall be pro rated according to the number of hours worked each fortnight. Payment made for sick leave granted in respect of part-time service shall be calculated in accordance with the formula set out in paragraph (a) of subclause (3) of this clause.

(7) An officer shall proceed on long service leave for 13 weeks after ten year's permanent part-time service and thereafter for each additional seven years continuous service. Payment made for long service leave granted to an officer in

respect of such part-time service shall be adjusted according to the hours worked by the officer during that part-time service, subject to the following—

- (a) If an officer consistently worked on a part-time basis for a regular number of hours during the whole of the officer's qualifying service, the officer shall continue to be paid the salary determined on that basis during the long service leave.
- (b) If an officer has worked a varying number of weekly hours during the period of qualifying service, the payment for long service leave granted in respect of part-time service should be calculated on a salary which bears to the full-time salary of the position occupied by the officer when taking leave the same proportion that the hours worked when employed part-time bears to the normal weekly hours of a full-time officer.

(8) Subject to Clauses 28.—Trade Union Training Leave and 29.—Leave for Training with the Defence Force Reserves, of this award, part-time officers shall receive the same entitlement as full-time officers, but payment shall only be made for those hours that would normally have been worked but for the leave.

(9) Subject to Clause 26.—Short Leave, of this award, part-time officers are eligible for short leave on a pro-rata basis calculated in accordance with the following formula—

$$\frac{\text{Hours Worked Per Fortnight}}{\text{Full Time Equivalent Hours}} \times \frac{22.5 \text{ Hours}}{1}$$

(10) Subject to Clause 25.—Study Leave, of this award, part-time officers are entitled to study leave on the same basis as full-time officers.

(11) (a) Where a full-time officer is permitted, at their initiative, to work part-time for a specified period no greater than 12 months, that officer has a right, upon written application to revert to full-time hours in that position, or a position of equal classification, as soon as is deemed practicable by the employer, but no later than the expiry of the agreed period.

(b) A full-time officer who is permitted at their initiative to work part-time for an unspecified period may apply to revert to full-time hours in that position but only as soon as deemed practicable by the employer.

This should not prevent the transfer of said officer to another full-time position at a classification commensurate to that of their previous full-time position.

(c) A part-time officer who was previously a full-time officer within the organisation who occupies a part-time office which was the initiative of the employer and who desires to revert to full-time employment will be required to seek promotion or transfer to a full-time position by—

- (i) application for advertised vacancies; and/or
- (ii) by notification in writing to the employer of their desire to revert to full-time employment.

(12) The number or proportion of part-time officers employed in public authorities shall not exceed any number or proportion that may be agreed in writing between the Union and the Employer.

10.—SALARIES AND SALARY RANGES

(1) The employer shall allocate to offices such of the salary ranges as is deemed appropriate. Such salaries and salary ranges shall be those contained in Schedules D and E of this Award.

(2) In allocating salaries or salary ranges an employer may amalgamate any two or more levels or allocate specific salary points from a level or levels prescribed by this Award.

(3) Subject to Clause 11.—Salaries—Specified Callings of this Award the annual salaries applicable to officers covered by this Award shall be as contained in Schedule D of this Award. Provided that—

- (a) officers appointed or promoted to a Level 1 position shall not be entitled to progress beyond the 24 year old or fourth year of adult service rate of salary, unless the officer is deemed to be qualified for promotion as determined by the employer;

- (b) an officer who is 21 years of age or older on appointment to Level 1 may be appointed at the minimum rate of pay based on years of service and not on age;
- (c) the employer is not prohibited from granting special allowances based on additional duties and responsibilities undertaken by an officer due to expertise and knowledge of the officer.

11.—SALARIES—SPECIFIED CALLINGS

(1) Officers, who possess a relevant tertiary level qualification, or equivalent determined by the employer, and who are employed in the callings of Agricultural Scientist, Architect, Dentist, Education Officer, Engineer, Geologist, Laboratory Technologist, Land Surveyor, Legal Officer, Librarian, Medical Officer, Pharmacist, Planning Officer, Clinical Psychologist, Psychologist, Quantity Surveyor, Scientific Officer, Social Worker, Therapist (Occupational, Physio or Speech), Veterinary Scientist, or any other professional callings determined by the employer shall be entitled to annual salaries as contained in Schedule E of this Award.

(2) Notwithstanding the provisions contained in subclause (5) of this clause, on appointment or promotion to the Level 2/4 under this clause—

- (a) officers, who have completed an approved three year tertiary qualification, relevant to their calling, shall commence at the first year increment;
- (b) officers who have completed an approved four year tertiary qualification, relevant to their calling, shall commence at the second year increment;
- (c) officers, who have completed an approved Masters or PhD degree relevant to their calling shall commence on the third year increment.

Provided that officers who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(3) The employer shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this clause and shall maintain a manual setting out such qualifications.

(4) The employer in allocating levels pursuant to subclause (1) of this clause may determine a commencing salary above Level 2/4 for a particular calling/callings.

(5) The following conditions shall apply to officers in the callings detailed below—

- (a) Officers employed in the calling of Education Officer and appointed or promoted to Level 2/4 under this Award shall commence on the following salary points—
 - (i) officers who have completed an approved three year qualification, relevant to their calling, shall commence at the first year of the range, subject to (v) below;
 - (ii) officers who have completed an approved four year tertiary qualification, relevant to their calling, shall commence at the second year of the range, subject to (v) below;
 - (iii) officers, who hold a relevant qualification such as an Honours or other four year degree (or equivalent) plus a Diploma of Education, or a relevant Masters degree of PhD, shall commence at the third year of the range subject to (v) below;
 - (iv) officers, who hold a relevant Masters Degree or PhD plus a Diploma of Education, shall commence at the fourth year of the range, subject to (v) below;
 - (v) officers, who have not less than two years of relevant experience, shall receive an additional increment at the time of appointment. Where the officer has had three or more years of relevant experience, two additional increments shall be granted at the time of commencement;
- (b) (i) officers employed in the calling of Engineer and who are classified Level 2/4 under this

Award shall be paid a minimum salary at the rate prescribed for the maximum of Level 2/4 where the officer is an “experienced engineer” as defined.

For the purpose of this paragraph “experienced engineer” shall mean—

- (aa) An Engineer, appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia or who attains that status during service.
- (bb) An Engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College or Institution acceptable to the Public Authority on the recommendation of The Institution of Engineers, Australia, and who—
 - (i) having graduated in a four or five year degree course at a University or Institution recognised by the employer, has had four years’ experience on professional engineering duties acceptable to the employer since becoming a qualified engineer; or
 - (ii) not having a University degree but possessing a diploma recognised by the employer has had five years’ experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

(c) There shall be for the calling of Legal Officer an additional salary point which shall be the salary applicable to Level 9 (maximum) plus a special allowance equivalent to half the difference between Level 9 (maximum) and Class 1.

(d) There shall be for the callings of Medical Officers and Psychiatrists two additional salary points which may be used. These salary points shall be—

- (i) The salary applicable to Class 1 plus a special allowance equivalent to half the difference Class 1 and Class 2.
- (ii) The salary applicable to Class 2 plus a special allowance equivalent to half the difference between Class 2 and Class 3.

11A.—FIRST AND SECOND ARBITRATED SAFETY NET ADJUSTMENT

The rates of pay in this award include the first and second \$16.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. The first and second \$16.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset first and second arbitrated safety net adjustments.

12.—ANNUAL INCREMENTS

(1) Subject to good conduct, diligence and efficiency, an officer shall proceed to the maximum of the officer’s salary range by annual increments according to the increments of such salary range.

(2) Before any increase in salary is paid to an officer who occupies an office which is allocated a range of salary, the employer must be satisfied in respect of the officer’s efficiency, diligence and conduct and where the employer is satisfied with the assessment, the increase in salary shall be paid.

(3) Where an officer is the subject of an adverse assessment pursuant to subclause (2) of this clause the following provisions shall apply—

- (a) the assessment shall be put in writing and brought to the notice of the officer and shall be initialled by the officer;
- (b) if the officer desires to give any explanation in respect of the assessment or give any reasons for disagreeing with the assessment, the officer shall put the explanation or reasons in writing;
- (c) the employer shall consider the assessment and the officer's explanation or reasons;
- (d) the employer shall notify the officer the decision within 28 clear days of receipt of the assessment.

(4) Where an increase is not paid for a specific period, the employer shall complete a further assessment before the expiry of that specific period and the provisions of subclauses (2) and (3) of this clause shall apply in respect of that assessment.

(5) The non-payment of an increase shall not change the normal anniversary date of any further increase due to the officer.

(6) For the purposes of this clause "continuous service" except where an increment is payable according to age, shall not include—

- (a) any period exceeding 14 calendar days during which an officer is absent on leave without pay. In the case of leave without pay which exceeds 14 calendar days the entire period of such leave without pay is exercised in full;
- (b) any period which exceeds six months in one continuous period during which an officer is absent on workers' compensation. Provided that only that portion of such continuous absence which exceeds six months shall not count as "continuous service";
- (c) any period which exceeds three months in one continuous period during which an officer is absent on sick leave without pay. Provided that only that portion of such continuous absence which exceeds three months shall not count as "continuous service".

13.—PAYMENT OF SALARIES

(1) Salaries shall be paid fortnightly or weekly as determined by the employer by direct funds transfer to the credit of an account nominated by the officer at a bank, building society or credit union approved by the Under Treasurer of the Western Australian State Government or an accountable officer. Provided that where such form of payment is impractical or where some exceptional circumstances exist, and by agreement between the employer and the Union, payment may be made by cheque.

(2) (a) A fortnight's salary shall be computed in accordance with the following formula—

$$\frac{\text{annual salary}}{313} \times \frac{12}{1}$$

(b) A week's salary shall be computed in accordance with the following formula—

$$\frac{\text{annual salary}}{313} \times \frac{6}{1}$$

(3) (a) Subject to paragraph (b) of this subclause the hourly rate shall be computed as follows—

$$\frac{\text{fortnightly salary}}{75}$$

(b) Officers employed on a 76 hour fortnight basis shall have the hourly rate computed as follows—

$$\frac{\text{fortnightly salary}}{76}$$

(4) (a) A casual officer shall be paid as prescribed in paragraph (a) of subclause (3) of this clause for the classification in which the casual officer is employed for each hour so employed, with the addition of 20 per cent in lieu of annual leave,

sick leave, long service leave and payment for public holidays.

(b) The provisions of subclause (1) of this clause shall not apply to a casual officer.

14.—HIGHER DUTIES ALLOWANCE

(1) Subject to subclause (2) of this clause an officer who is directed by the employer to act in an office which is classified higher than the officer's own substantive office and who performs the full duties and accepts the full responsibility of the higher office for a continuous period of five consecutive working days or more, shall, subject to the provisions of this clause, be paid an allowance equal to the difference between the officer's own salary and the salary the officer would receive if the officer was permanently appointed to the office in which the officer is so directed to act.

(2) (a) An officer who is directed to act in a higher classified office but who is not required to carry out the full duties of the position and/or accept the full responsibilities, shall be paid such proportion of the acting in high capacity payment provided for in subclause (1) of this clause as the duties and responsibilities performed bear to the full duties and responsibilities of the higher office. Provided that the officer shall be informed, prior to the commencement of acting in the higher classified office, of the duties to be carried out, the responsibilities to be accepted and the allowance to be paid.

(b) The allowance paid may be adjusted during the period of higher duties.

(3) Where the full duties of a higher office are temporarily performed by two (2) or more officers they shall each be paid an allowance as determined by the employer.

(4) Where an officer regularly performs the duty of a position higher than that in which that officer is designated for at least three full days in each week for a continuous period of not less than four weeks, that officer shall be deemed to have performed such higher duty for the whole of each such week for the purpose of subclause (1) of this clause.

(5) Where any officer regularly performs the duty of a position higher than that in which that officer is designated for at least two full days but less than three full days in each week for a continuous period of not less than four weeks, that officer shall be paid while performing such duty at a rate not less than the minimum salary for such higher position.

(6) Notwithstanding the provisions of subclauses (2) and (3) of this clause, an officer who relieves in a particular position higher than which that officer is classified for a period of four weeks, continuous or broken and not necessarily in one financial year, and not already in receipt of a minimum salary attached to that position, shall, subject to satisfactory performance in the position be paid such minimum from the beginning of any further or subsequent period of relief.

(7) An officer entitled to the payment of a higher rate under the provisions of subclauses (1) and (2) of this clause shall be entitled to any increment which may accrue because of that officer's continuous service in such position. In calculating such period of continuous service any period spent on annual leave, sick leave and long service leave shall be taken into account provided such officer resumes duty in the higher position following such leave.

(8) Any officer entitled to the payment of a higher rate under the provisions of subclause (1) of this clause for a period of at least one continuous month shall have such higher rate (or if at least one continuous month is worked on more than one occasion) shall have such higher rates taken into account when calculating the rate to be paid during that officer's annual leave to the extent that the officer's ordinary rate shall be increased by an amount in proportion to the time spent on such higher rate.

(9) For the purpose of this clause, positions on the same classifications shall be grouped as one position.

(10) When an officer acting in a higher position is off duty on sick leave and resumes in that or another higher position, such officer's sick leave will be treated as being portion of the first mentioned higher position.

(11) For the purpose of this clause 'normal annual leave' shall mean the annual period of recreation leave as prescribed in Clause 19.—Annual Leave of this Award.

15.—DEDUCTION OF UNION SUBSCRIPTIONS

(1) Each employer shall deduct the normal Union membership subscriptions as equal amounts each pay period from the salary of officers who are members of the Union in accordance with each Payroll Deduction Authority form.

(2) Payroll Deduction Authority forms shall be completed by officers. Where the employer requests a standard procurement form, that form shall be used.

(3) Where required by the employer or Union, the Union Secretary or person acting in the Secretary's stead, shall countersign all forms and forward them to the employer's paymaster.

(4) (a) The employer shall commence deduction of subscriptions from the first full pay period following receipt of a completed Payroll Deduction Authority form and continue deducting throughout the officer's period of employment, except as provided in subclause (5) of this clause or until the Payroll Deduction Authority is cancelled in writing by the officer.

(b) Where the Payroll Deduction Authority form authorises the employer to deduct Union subscriptions in accordance with the rules of the Union the Union shall notify the employer in writing of the level of Union subscription to be deducted. The employer shall implement any change to the Union subscriptions no later than one month after being notified by the Union except where the Union nominates a later date.

(5) (a) The collection of any nomination fee, arrears, levies or fines is not the responsibility of the employer.

(b) Where a deduction is not made from an officer in any pay period, either inadvertently or as a result of an officer not being entitled to salary sufficient to cover the subscription it shall be the officer's responsibility to settle the outstanding amount with the Union direct.

(6) The employer shall not make any deduction of subscriptions from an officer's termination pay on termination of service, other than normal deductions for the preceding pay period.

(7) The employer shall forward contributions deducted, together with supporting documentation, to the Union at such intervals as are agreed between the employer and the Union.

16.—HOURS

(1) Except as otherwise provided in this clause, the ordinary working hours shall not exceed 37½ in any one week to be worked in five of the six days excluding Sunday and shall be worked between the hours of 7.00am and 6.00pm Monday to Friday inclusive, with a break of one hour for lunch and between 9.00am and 12.00 noon on Saturday. Provided that by agreement between the parties hereto, the lunch break may be reduced to not less than 30 minutes and provided further that other starting and finishing times may be fixed by agreement between the parties to this Award.

(a) The ordinary working hours of clerical officers not covered by the definition of traffic officers shall not exceed 37½ hours in any one week to be worked in five days including Saturdays.

(b) The ordinary working hours of traffic officers (other than an officer specified in paragraph (a) hereof), maintenance supervisors and any other officer agreed upon between the parties hereto shall not exceed 38 hours in any one week to be worked in five days including Sundays.

(c) The hours prescribed in paragraphs (a) and (b) of this clause may be worked in six days including Sunday by agreement between the parties to this Award.

(2) (a) Officers shall not be required to work for more than five hours without a break for a meal. Such break shall be for a period of not less than 30 minutes and in the case of clerical officers and night staff supervisors not more than one hour. Provided that by agreement between the parties to this Award, officers may be required to work a straight shift inclusive of the meal break.

(b) In the event of an emergency an employer may defer the taking of a meal break.

(3) The employer may vary the ordinary hours of attendance observed in the public authority so as to make provision for—

- (a) the attendance of officers for ordinary duty on a Saturday, Sunday, public holiday as prescribed in Clause 20.—Public Holidays of this Award;

(b) the performance of shift work including work on Saturdays, Sundays, public holidays as prescribed in Clause 17.—Shift Work of this Award;

(c) the disposal of public business or the nature of the duties of an officer or class of officers.

Provided that where the ordinary hours of duty are so varied they shall not prescribe ordinary working hours in excess of 150 in a four week period except in the case of officers required to work 38 ordinary hours per week. This provision is subject to paragraph (a) of subclause (2) of this clause.

(4) Notwithstanding the provisions of paragraph (a) of this subclause, where it is considered necessary to provide for more economic operations the employer may authorise the operation of alternative working arrangements.

Such alternative working arrangements shall be either—

(a) the operation of flexi-time as specified in subclause (7) of this clause; or

(b) the operation of a nine day fortnight as specified in subclause (8) of this clause; or

(c) such other arrangement as is considered appropriate by the employer.

(5) (a) Where an officer is required to relieve in another position which is subject to a different working arrangement the officer relieving shall observe the working arrangement applicable to the position in which the relief is being carried out.

(b) A period of relief to be carried out in a position subject to a nine day fortnight shall not commence or cease on the substantive occupant's rostered day off.

(c) In respect to the provisions contained in subclause (7) of this clause any period of relief which results in the officer incurring a debit or credit of hours outside of 75 hours a fortnight shall be adjusted upon return to the substantive position subject to consultation with the employer.

(6) Notwithstanding the provisions contained in this clause, officers Level 6 and above shall work those hours designed to meet the responsibilities of their management tasks as directed by the employer. This provision does not preclude the employer from authorising modified working hours as prescribed in subclause (3) or (4) of this clause.

(7) (a) In accordance with paragraph (a) of subclause (4) of this clause officers may select their own starting and finishing times within the following periods—

7.30am to 9.30am

12.00 noon to 2.00pm

3.30pm to 6.00pm

(b) (i) A flexi-time roster shall be maintained by the employer who will indicate the minimum staffing and other requirements in respect to starting and finishing times, lunch break coverage and flexi-leave.

(ii) The flexi-time roster shall be made available to all affected officers no later than three days prior to the settlement period described in sub-paragraph (i) of paragraph (b) of subclause (7) of this clause.

(iii) The flexi-time roster shall be prepared in consultation with the affected officers, subject to the employer retaining the right to determine hours to suit operational needs.

(iv) Subject to four weeks' notice being given, the employer may withdraw the authorisation of a flexi-time roster.

(c) Officers must work in the following periods, to be known for the purposes of this subclause, as core periods—

9.30am to 12.00 noon

2.00pm to 3.30pm

For the purposes of this subclause such periods are to be known as core periods.

(d) An officer shall be allowed a meal break between 12.00 noon and 2.00pm of not less than 30 minutes but not exceeding 45 minutes except where approved by the employer.

(e) Notwithstanding any provisions contained in this subclause an officer may be allowed a maximum of two full days or any combination of half days and full days that does not exceed two days in any one settlement period as described in sub-paragraph (i) of paragraph (b) of subclause (7) of this clause.

(f) Flexi-leave may be taken before accrual subject to such conditions as the public authority may impose.

(g) Full days of flexi-leave may not be taken on consecutive working days.

(h) For the purposes of this subclause a settlement period shall—

- (i) consist of four weeks;
- (ii) commence at the beginning of a pay period;
- (iii) have the required hours of duty of 150 hours.
- (i) Credit hours a maximum of seven hours 30 minutes shall be allowed at the end of each settlement period and shall be carried forward to the next settlement period.
- (ii) In the case of credit hours greater than seven hours thirty (30) minutes gained in one settlement period, the hours in excess of seven hours 30 minutes shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.
- (j) (i) Debit hours below the required 150 hours prescribed in paragraph (i) of this subclause to a maximum of four hours shall be allowed at the end of each settlement period and shall be carried forward to the next settlement period.
- (ii) For debit hours in excess of four hours, officers shall be required to take leave without pay for the period necessary to reduce debit hours to those specified in sub-paragraph (i) of paragraph (k) of this clause.

(k) Notwithstanding any of the provisions contained in this subclause, maximum of ten hours may be worked in any one day.

(l) Where study leave as provided in Clause 25.—Study Leave of this Award has been approved credits will be given for education commitments provided in that clause and for which leave is necessary to allow for attendance at formal classes.

- (m) (i) Officers receiving at least one day's prior notice of overtime shall be required to work the prescribed hours of duty determined by the employer under subclause (1) of this clause.
- (ii) Where an officer is required to work overtime at the conclusion of a day with less than one day's notice, and
 - (aa) where the officer has at the commencement of that day two hours or more flexi-time credits, the officer shall be paid overtime after five hours' work on that day or for time worked after 3.30pm, whichever is the later; or
 - (bb) where that officer has commenced duty prior to 8.30am and has, at the commencement of that day, less than two hours' flexi-time credits, the officer shall be paid overtime, for time worked after the completion of prescribed hours of duty or after working seven hours 30 minutes on that day, whichever is the earlier; or
 - (cc) where that officer has commenced work after 8.30am and has, at the commencement of that day, less than two hours' flexi-time credits, the officer shall be paid overtime, for time worked after 5.30pm or after working seven hours 30 minutes, on that day whichever is the earlier.
- (iii) Where an officer is required to work overtime at the beginning of a day with less than one day's notice, that officer shall be paid overtime for any time worked prior to the commencing time for prescribed hours of duty determined by the public authority under subclause (1) of this clause.

(8) (a) In accordance with the provision contained in paragraph (b) of subclause (4) of this clause, the ordinary hours of duty of 75 hours a fortnight may be worked over nine days of the fortnight exclusive of work performed on Saturday, Sunday and the rostered day off.

(b) For the purposes of this subclause the ordinary hours of duty to be worked shall be eight hours 20 minutes worked

between 7.00am and 6.00pm, on five days per week excluding Saturday and Sunday.

(c) Each officer shall be allowed one rostered day off per fortnight.

(d) When a public holiday falls on a rostered day off that officer shall be granted a day in lieu of the public holiday prior to the conclusion of the current fortnight.

(e) In taking annual leave, where a period of leave involves a part day, the part day shall be availed of at the commencement of the period of leave.

(9) (a) The spread of hours shall not exceed ten hours.

(b) Traffic officers shall not be called upon for duty until they have had a minimum of ten hours (and wherever practicable at least 12 hours) off duty.

(10) The shifts worked by traffic officers shall rotate weekly so far as is practicable.

(11) Signing on depots shall be at those points which are mutually agreed upon between the parties to this Award.

(12) The employer may alter from time to time the days upon which work is performed and the hours worked each day provided the method of making such alterations is mutually agreed upon by the parties to this Award.

(13) (a) All known duty to be performed by traffic officers covered by this Award shall be rostered.

(b) The employer shall post weekly duty rosters which shall be exhibited in such a place as may be conveniently and readily seen by each officer concerned.

(c) Weekly duty rosters shall be posted ten (10) days before coming into operation.

(d) Rosters in respect of Public Holidays, and special fixtures such as the Royal Show and Race Meetings, the dates of which are known ahead, shall be posted at least 13 days preceding the fixture.

17.—SHIFT WORK

(1) In this clause the following expressions shall have the following meaning—

“afternoon shift” shall mean a shift commencing at or after 12.00 noon and before 6.00pm.

“night shift” shall mean a shift commencing at or after 6.00pm.

“public holiday” shall mean a holiday provided in Clause 20.—Public Holidays of this Award.

(2) (a) Notwithstanding the provisions of subclause (1) of Clause 16.—Hours, for all time on duty between the hours of 5.00pm and 7.00am (other than on Saturdays, Sundays and Public Holidays) employees except those on broken shifts, shall be paid 15 per centum more than their ordinary rate. Provided that subject to the exception specified above any shift which finishes at or after 8.00pm shall be paid 15 per centum more than ordinary rates for the whole of such shift.

(b) (i) All ordinary hours worked on Saturday shall be paid for at the rate of half time extra.

(ii) All ordinary hours worked on Sunday shall be paid for at the rate of ordinary time extra with a minimum of four hours at that rate whether worked or not, except when such work is owing to another officer failing to report for duty, when the minimum shall be two hours.

(iii) All ordinary hours worked on a public holiday shall be paid for at the rate of ordinary time and one half extra.

Provided that in lieu of the foregoing provisions of this paragraph and subject to agreement between the employer and the officer, work performed during ordinary rostered hours on a public holiday shall be paid for at the rate of time and one half and the officer may in addition, be allowed a day's leave with pay to be added to annual leave or to be taken at some other time within a period of one year.

(c) An officer rostered off duty on a public holiday shall be paid at ordinary rates for such day or, subject to agreement between the employer and the officer, be allowed a day's leave with pay in lieu of the holiday to be added to the officer's next annual leave entitlement or to be taken at a mutually convenient time within a period of one year.

(d) An officer regularly engaged on shift work shall be allowed one week's leave in addition to the officer's normal entitlement to annual leave of absence for recreation.

(e) Additional leave provided by paragraphs (b) and (c) of this subclause shall not be subject to the annual leave loading prescribed by subclause (14) of Clause 19.—Annual Leave of this Award.

(f) Work performed by an officer in excess of the ordinary hours for the officer's shift or on a rostered day off shall be paid for in accordance with the provisions of Clause 18.—Overtime of this Award.

(3) When the daily hours, including any overtime extend into the following day, such hours shall be deemed to be part of the day on which the major ordinary time was worked.

(4) On spread shifts all ordinary time worked between 9½ and 10 hours shall be paid for at the rate of half time extra.

(5) On spread shifts spread over more than 9½ hours all ordinary time worked prior to 6.30am shall be paid for at the rate of half time extra.

18.—OVERTIME

(1) In this clause the following expressions shall have the following meaning—

“prescribed hours of duty” means the officer's normal working hours as prescribed in Clause 16.—Hours or written instruction issued out of that clause.

“public holiday” means the days prescribed in Clause 20.—Public Holidays of this Award.

“a day” shall mean from midnight to midnight.

(2) When and as often as it is necessary to overcome arrears of work or to meet pressure of business, any officer may be required by the employer to perform overtime duty at times other than the ordinary hours of attendance applicable to that officer.

(3) (a) All work performed by an officer whose hours of attendance are determined in accordance with subclause (1) of Clause 16.—Hours of this Award by direction of the employer—

- (i) before or after the prescribed hours of duty on a week-day; and
 - (ii) on a Saturday, Sunday or public holiday, shall be classed as overtime and, subject to the provisions of this clause, shall be paid for at the hourly rate prescribed by paragraph (b) of this subclause.
- (b) (i) Except as hereinafter provided, all time worked outside the ordinary hours of duty on any day, outside the daily spread of ordinary hours, or on a rostered day off, shall be paid for at the rate of time and a half for the first two hours and double time thereafter.
- (ii) Except as provided in paragraph (j) of this clause, all overtime worked on Saturdays and Sundays shall be paid for at the rate of double time, and all time worked on Award Holidays shall be paid for at the rate of double time and one half.
- (iii) All overtime worked outside the daily spread of ten hours shall be paid for at the rate of double time and shall stand alone.
- (iv) All overtime worked on Specials between the hours of 1.30am and 5.30am shall stand alone and be paid for at the rate of double time with a minimum payment for two hours' work at that rate.
- (v) The employer may require any officer to work reasonable overtime at the overtime rates provided under this Award and such an officer shall work overtime in accordance with such requirements.
- (vi) No organisation party to this Award, or officer or officers covered by this Award, shall in any way whether directly or indirectly be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.
- (vii) Where an officer is called upon to work unrostered overtime outside the hours of available public transport, such officer shall, upon request, be provided with transport to or from such officer's place of residence.

(viii) Notwithstanding anything contained in this Award to the contrary, no time of duty whatsoever shall be required to be paid for at more than double time and one half.

Provided that a special allowance or higher duties allowance shall be included in “fortnightly salary” when overtime is worked on duties for which these allowances are specifically paid.

(ix) For the purposes of this clause fortnightly salary shall not include any district allowances, personal allowances, service allowances, special allowances or higher duties allowance, unless otherwise approved by the employer.

Provided that a special allowance or higher duties allowance shall be included in “fortnightly salary” when overtime is worked on duties for which these allowances are specifically paid.

(c) Subject to prior agreement in writing, time off in lieu of payment may be granted by the employer. Such time off in lieu to be determined on an hourly basis by dividing the normal hourly rate of pay into the amount to which the officer would otherwise have been entitled at the prescribed rate in accordance with paragraph (b) of this subclause.

The employee shall be required to clear accumulated time off in lieu within two months of the overtime being performed. If the employer is unable to release the employee to clear such leave, then the employee shall be paid for the overtime worked.

Provided that by agreement between the employer and the employee, time off in lieu of overtime may be able to be accumulated beyond two months from the time the overtime is performed so as to be taken in conjunction with periods of leave.

(d) Any commuted allowance and/or time off in lieu of overtime, other than that provided in paragraph (c) of this subclause shall be only negotiated between the employer and the Union.

(e) No claim for payment or time off in lieu under the provisions of this clause shall be allowed in respect of any day on which the additional time worked amounts to less than 30 minutes.

(f) Where an officer having received prior notice, is required to return to duty—

- (i) On a Saturday, Sunday or public holiday otherwise than during prescribed hours of duty the officer shall be entitled to payment at the rate in accordance with paragraph (b) of this subclause for a minimum period of three hours.
- (ii) Before or after the prescribed hours of duty on a weekday the officer shall be entitled to payment at the rate in accordance with paragraph (b) of this subclause for a minimum period of one hour 30 minutes.
- (iii) For the purposes of this paragraph, where an officer is required to return to duty more than once, each duty period shall stand alone in respect to the application of minimum period payment except where the second or subsequent return to duty is within any such minimum period.

(g) The provisions of paragraph (f) of this subclause shall not apply in cases where it is customary for an officer to return to the officer's place of employment to perform a specific job outside the officer's prescribed hours of duty or where the overtime is continuous (subject to a meal break) with the completion or commencement of prescribed hours of duty.

(h) When an officer is directed to work overtime at a place other than the usual headquarters, and provided that place where the overtime is to be worked is situated in the area within a radius of 50 kilometres from the usual headquarters, and the time spent in travelling to and from that place is in excess of the time which an officer would ordinarily spend in travelling to and from the usual headquarters, and provided such travel is undertaken on the same day as the overtime is worked, then such excess time shall be deemed to form part of the overtime worked.

(i) Except as provided in paragraph (b) of subclause (4) and paragraph (b) of subclause (5) of this clause when an officer is directed to work overtime at a place other than the usual

headquarters and provided that place where the overtime is to be worked is situated outside the area within the radius of 50 kilometres from the usual headquarters and the time spent in travelling to and from that place is in excess of the time which an officer would ordinarily spend in travelling to and from the usual headquarters, then the officer shall be granted time off in lieu of such excess time spent in actual travel in accordance with subclause (6) of this clause.

(j) Except as provided in paragraph (1) of this subclause, payment for overtime, or the granting of time off in lieu of overtime or travelling time, shall not be approved in the following cases—

Except as provided in subclause (10) of Schedule N—Transition Provisions (Broadbanding), all overtime worked under the instruction of or with the approval of the Trust by any officer in receipt of a salary in excess of the maximum of the Level 3 range shall be paid for at ordinary rates applicable to the day.

(k) Notwithstanding the provisions of paragraph (j) of this subclause, where from the nature of the duties required or from other relevant circumstances it appears just and reasonable, any such officer as is referred to in that paragraph shall, with the special approval of the employer be paid overtime or granted time off in lieu as prescribed by paragraph (b) or paragraph (c) respectively of this subclause and where in any such case the employer declines to give such special approval the matter may be referred to the Public Service Arbitrator. When an officer not subject to close supervision is directed by the employer to carry out specific duties involving the working of overtime, and provided such overtime can be reasonably determined, then such officer shall be entitled to payment or time off in lieu of overtime worked in accordance with paragraph (b) or paragraph (c) of this subclause.

(l) (i) Where an officer performs overtime duty after the time at which the officer's normal hours of duty end on one day and before the time at which the officer's normal hours of duty are to commence on the next succeeding day which results in the officer not being off duty between these times for a continuous period of not less than ten hours, the officer is entitled to be absent from duty without loss of salary from the time of ceasing overtime duty, until the officer has been off duty for a continuous period of ten hours.

(ii) Provided that where an officer is required to return to or continue work without the break provided in sub-paragraph (i) of this paragraph then the officer shall be paid at double the ordinary rate until released from duty or until the officer has had ten consecutive hours off duty without loss of salary for ordinary working time occurring during such absence.

(iii) The provisions of this paragraph shall not apply to officers included in subclause (4) of this clause.

(m) Where an officer is required to work a continuous period of overtime which extends past midnight into the succeeding day the time worked after midnight shall be included with that worked before midnight for the purpose of calculation of payment provided for in paragraph (b) of this subclause.

(4) (a) For the purpose of this subclause—

'Standby' shall mean a written instruction to an officer to remain at the officer's place of employment during any period outside the officers normal hours of duty, and to perform certain designated tasks periodically or on an ad hoc basis. Such officer shall be provided with appropriate facilities for sleeping if attendance is overnight, and other personal needs, where practicable.

Other than in extraordinary circumstances, officers shall not be required to be present more than two periods of standby in any rostered week.

This provision shall not replace normal overtime or shift work requirements.

'On Call' shall mean a written instruction to an officer rostered to remain at the officer's residence or to otherwise be immediately contactable by telephone or paging system outside the officer's normal hours of duty in case of a call out requiring an immediate return to duty.

'Availability' shall mean a written instruction to an officer to remain contactable, but not necessarily in immediate proximity to a telephone paging system,

outside the officer's normal hours of duty and be available and in a fit state at all such time for recall to duty.

'Availability' will not include situations in which officers carry paging devices or make their telephone numbers available only in the event that they may be needed for casual contact or recall to work. Subject to paragraph (j) of subclause (3) of this clause recall to work under such circumstances would constitute emergency duty in accordance with subclause (5) of this clause.

(b) Except as otherwise agreed between the employer and the Union, an officer who is required by the employer to be on 'out of hours contact' during periods off duty shall be paid an allowance in accordance with the following formula for each hour or part thereof the officer is on 'out of hours contact'.

Standby—

Level 2 (minimum weekly rate	X	$\frac{1}{37.5}$	X	$\frac{37.5}{100}$
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On Call—

Level 2 (minimum weekly rate	X	$\frac{1}{37.5}$	X	$\frac{18.75}{100}$
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Availability—

Level 2 (minimum weekly rate x	$\frac{1}{37.5}$	X	$\frac{18.75}{100}$	X	$\frac{50}{100}$
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Such allowances are contained in Part I of Schedule I of this award.

Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is made in accordance with the provisions of subclause (3) of this clause when the officer is recalled to work.

(c) Where an officer is required to be on 'on call' or 'availability' and the means of contact is to be by telephone the employer shall—

- Where the telephone is not already installed, pay the cost of such installation.
- Where an officer pays or contributes towards the payment of the rental of such telephone, pay the officer 1/52nd of the annual rental paid by the officer for each seven days or part thereof on which an officer is rostered to be on 'on call' or 'availability'.
- Provided that where as a usual feature of the duties an officer is regularly rostered to be on 'on call' or 'availability', pay the full amount of the telephone rental.

(d) An officer shall be reimbursed the cost of all telephone calls made on behalf of the employer as a result of contact pursuant to paragraph (a) of this clause.

(e) Where an officer rostered for 'on call' duty is recalled for duty during the period for which the officer is on 'out of hours contact' then the officer shall receive payment for hours worked in accordance with paragraph (b) of subclause (3) of this clause.

(f) Time spent in travelling to and from the place of duty where an officer rostered on 'on call' or 'availability' is actually recalled to duty, shall be included with actual duty performed for purposes of overtime payment.

(g) Minimum payment provisions do not apply to an officer rostered for 'out of hours contact' duty.

(h) An officer in receipt of an 'out of hours contract' allowance and who is recalled to duty shall not be regarded as having performed emergency duty in accordance with subclause (5) of this clause.

(i) Officers subject to this clause shall, where practicable, be periodically absented from any requirement to hold themselves on 'standby', 'on call' or 'availability'.

(5) (a) (i) Where an officer is called on duty to meet an emergency at a time when the officer would not ordinarily have been on duty and no notice of such call was given prior to completion of usual duty on the last day of work prior to the

day on which the officer is called on duty, then, if called to duty—

- (aa) on a Saturday, Sunday or Public Holiday otherwise than during the prescribed hours of duty the officer shall be entitled to payment at the rate in accordance with paragraph (b) of subclause (3) of this clause for a minimum period of three hours;
- (bb) before or after the prescribed hours of duty on a week-day the officer shall be entitled to payment at the rate in accordance with paragraph (b) of subclause (3) of this clause for a minimum period of two hours 30 minutes;

(ii) For the purpose of this subclause, where an officer is recalled more than once, each period of emergency duty shall stand alone in respect to the application of the minimum period payment, subject to paragraph (c) of this subclause.

(b) Time spent in travelling to and from the place of duty where the officer is actually recalled to perform emergency duty shall be included with actual duty performed for the purposes of overtime payment.

(c) An officer recalled to work to perform emergency duty shall not be obliged to work for the minimum period if the work is completed in less time, provided that an officer called out more than once within any such minimum period shall not be entitled to any further payment for the time worked within that minimum period.

(6) An officer eligible for payment of overtime in accordance with paragraph (j) of subclause (3) of this clause, who is required to travel on official business outside of the officer's normal working hours and away from the officer's usual headquarters, shall be granted time off in lieu of such actual time spent in travelling at equivalent or ordinary rates on weekdays and at time and one half rates on Saturdays, Sundays, and public holidays, provided—

- (a) Such travel is undertaken at the direction of the employer.
- (b) Such travel shall not include—
 - (i) time spent in travelling by an officer on duty at a temporary headquarters to the officer's home for weekends for the officer's own convenience;
 - (ii) time spent in travelling by plane between the hours of 11.00pm and 6.00am;
 - (iii) time spent in travelling by train or coach between the hours of 11.00pm and 6.00am.
 - (iv) time spent in travelling by ship when meals and accommodation are provided;
 - (v) time spent in travel resulting from the permanent transfer or promotion of an officer to a new location;
 - (vi) time in travelling in which an officer is required by the employer to drive, outside ordinary hours of duty, an employer's vehicle or to drive the officer's own motor vehicle involving the payment of motor vehicle allowance but such time shall be deemed to be overtime and paid in accordance with paragraph (b) of subclause (3) of this clause.
- (c) Time off in lieu will not be granted for periods of less than 30 minutes.
- (d) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty, and where the exigencies of travel compel an officer to travel during the officer's usual lunch interval such additional travelling time is not to be taken into account in computing the number of hours of travelling time due.
- (e) Where such travel is undertaken on a normal working day, time off in lieu is granted only for such time spent in travelling before and/or after the usual hours of duty which is in excess of the officer's ordinary travelling time.
- (f) Except as provided in paragraph (b) of this subclause, all time spent in actual travel on Saturdays, Sundays,

and public holidays provided in Clause 20.—Public Holidays of this Award, shall be deemed to be excess travelling time.

(7) (a) Except in the case of emergency, an officer shall not be compelled to work more than five hours' overtime duty without a meal break. At the conclusion of a meal break the calculation of the five hours limit recommences.

(b) An officer required to work overtime who purchases a meal shall be reimbursed for each meal purchased at the rate prescribed for that meal in Part II of Schedule I to this Award.

Provided that the overtime worked when such a meal is purchased totals not less than two hours, such reimbursement shall be in addition to any payment for overtime to which the officer is entitled.

(c) If an officer, having received prior notification of a requirement to work overtime, is no longer required, then the officer shall be entitled, in addition to any other penalty, to reimbursement for a meal previously purchased.

(8) Any group of officers whose duties necessarily entail special conditions of employment shall not be subject to the prescribed hours of duty as defined in subclause (2) of this clause if the employer and the Union so agree.

19.—ANNUAL LEAVE

(1) (a) Each officer is entitled to four weeks' leave on full pay for each year of service. Annual leave shall be calculated on a calendar year basis commencing on 1 July in each year.

(b) An officer may take annual leave during the year in which it accrues, but the time during which the leave may be taken is subject to the approval of the employer.

(c) An officer who is first appointed after 1 July is entitled to pro rata annual leave for that year in accordance with the formula contained in subclause (2) of this clause.

(2) Pro rata annual leave shall be calculated according to the following formula—

Completed calendar months of service—

1 2 3 4 5 6 7 8 9 10 11

Pro rata annual leave (working days)—

2 3 5 6 7 10 12 13 15 17 18

Provided that in the first and last months of an officer's service the officer is entitled to pro rata annual leave of one working day for each two completed weeks of service.

For the purposes of this subclause, an officer who commences on the first working day of a month and works for the remainder of the month and an officer who has worked throughout a month and terminates on the last working day of a month shall be regarded as having completed that calendar month of service.

(3) Annual leave shall be taken in one period unless otherwise approved by the employer.

(4) On written application, an officer shall be paid salary in advance when proceeding on annual leave.

(5) (a) When the convenience of the employer is serviced, the employer may approve the deferment of the commencing date for taking annual leave, but such approval shall only remain in force for a period of one year.

(b) The employer may renew the approval referred to in subclause (a) of this clause for a further period of a year or further periods of a year but so that an officer does not at any time accumulate more than three years' entitlement.

(c) Where the convenience of the employer is served, the employer may approve the deferment of the commencement date for taking leave so that an officer accumulates more than three years' entitlement, subject to any condition which the employer may determine.

(d) When an officer who has received approval to defer the commencement date for taking annual leave under paragraphs (a), (b) or (c) of this subclause next proceeds on annual leave, the annual leave first accrued shall be the first leave taken.

(6) On application to the employer, a lump sum payment for the money equivalent of any—

- (a) accrued annual leave as prescribed by subclause (1) of this clause shall be made to an officer who resigns, retires, is retired or in respect of an officer who dies. The provisions of this paragraph shall also

apply to an officer who is dismissed unless the misconduct for which the officer has been dismissed occurred prior to the completion of the qualifying period; and

- (b) pro rata annual leave shall be made to an officer who resigns, retires, is retired or in respect of an officer who dies but not to an officer who is dismissed.

(7) An officer who has been permitted to proceed on annual recreation leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an officer.

(8) When computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period an officer is on annual leave, observing a public holiday prescribed by this award, absence through sickness with or without pay. This provision applies except for that portion of an absence that exceeds three months, absence on workers' compensation except for that portion of an absence that exceeds six months, or any period exceeding two weeks during which the officer is absent on leave without pay.

(9) Every officer to whom the employer has granted annual leave in excess of four weeks because of special circumstances shall be credited with such additional leave on a pro rata basis according to the following formula—

Completed month of service	Pro rata annual leave (working days)	
	5 additional days	10 additional days
1	Nil	Nil
2	Nil	1
3	1	2
4	1	3
5	2	4
6	2	5
7	2	5
8	3	6
9	3	7
10	4	8
11	4	9

(10) Notwithstanding the foregoing, the employer may direct an officer to take annual leave and determine the date which such leave shall commence. Should the officer not comply with the direction, disciplinary action may be taken against the officer.

(11) (a) Subject to subclauses (2) and (4) of this clause a loading equivalent to 17½% of normal salary is payable to officers proceeding on annual leave, including accumulated annual leave.

(b) Subject to the provisions of subclause (4) of this clause shift workers who are granted an additional week's penalty leave when proceeding on annual leave including accumulated annual leave shall be paid loading equivalent to 20% of normal salary for five weeks leave.

(c) When a holiday falls on an officer's rostered day off, excluding nine day fortnight or similar arrangements, one day shall be added to such officer's annual leave.

(d) (i) Loading is paid on a maximum of four weeks' annual leave, or five weeks in the case of shift workers who are granted an additional week's penalty leave. Payment of the loading is not made on additional leave granted for any other purpose.

(ii) Maximum payment shall not exceed the Average Weekly Total Earnings of all Males in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

(iii) Maximum payment to shift workers who are granted an additional week's penalty leave shall not exceed five fourths of the Average Weekly Total Earnings of all Males in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

(e) Annual leave commencing in any year and extending without a break into the following year attracts the loading calculated on the salary applicable on the day the leave commenced. The maximum loading payable shall be that applicable on the day the leave is commenced.

(f) The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is commenced. Under these circumstances an officer can receive up to the maximum loading for the approved accumulated annual leave in addition to the loading for the current year's entitlement.

(g) A pro rata loading is payable on periods of approved annual leave less than four weeks.

(h) The loading is calculated on the rate of salary the officer receives at the commencement of leave under Schedule D—Salaries and Salary Ranges or E—Salaries—Specified Callings of the Award and, where applicable, the salary shall include the following allowances—

- (i) District Allowance;
- (ii) Personal Allowance;
- (iii) Protective Clothing Allowance, where it is paid as an annual amount;
- (iv) Child Allowance paid to officers whose headquarters are located North of the 26 degrees South latitude;
- (v) Commuted Overtime Allowance, where it is paid as an annual amount or a percentage of salary and paid throughout the year; and
- (vi) Higher Duties Allowance, but only where the specific conditions of Clause 14.—Higher Duties Allowance of this Award are satisfied.

(i) Where payment in lieu of accrued or pro rata annual leave is made on the death, dismissal, resignation or retirement of an officer, a loading calculated in accordance with the terms of this clause is to be paid. Provided that no loading shall be payable in respect of pro rata annual leave paid on resignation or where an officer is dismissed for misconduct.

(j) Part time officers shall be paid a pro rata loading at the salary rate applicable.

(k) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion. Provided that no refund shall be necessary in the event of the death of an officer.

(12) Notwithstanding anything else herein contained where the employer observes a Christmas close-down for the purpose of granting annual leave, an officer may be required to take such annual leave in not more than two periods, but neither of such periods shall be less than one week.

20.—PUBLIC HOLIDAYS

(1) The following days shall be allowed as holidays with pay—

- (a) New Year's Day, Australia Day, Good Friday, Easter Monday, Christmas Day, the 26th day of December (Boxing Day), the 25th day of April (Anzac Day).
- (b) The Anniversary of the Birthday of the Sovereign, Foundation Day (1st day of June), Labour Day (1st day of March).
- (c) All days which the Governor may appoint and are notified as Public Service Holidays.

(2) Whenever any of the days mentioned in paragraph (b) fall on a day other than a Monday, the next following Monday shall be the holiday instead of such day, unless otherwise gazetted.

21.—LONG SERVICE LEAVE

(1) Any officer who was employed prior to 6 March 1988 and has served continuously on the salaried staff for seven years shall be entitled to 13 weeks' long service leave on full pay or subject to departmental convenience 26 weeks on half pay and thereafter for every seven years of continuous service similar leave shall be granted.

Provided that any officer employed on or after 6 March 1988 shall be entitled to 13 weeks long service leave.

- (a) after a period of ten years' continuous service; and
- (b) after each further period of seven years' continuous service.

(2) Any holiday occurring during the period in which an officer is on long service leave will be calculated as a portion of that long service leave and extra days in lieu shall not be granted.

(3) (a) Officers regressed to the wages staff and re-appointed to the salaried staff shall for the purpose of this clause be treated as if the whole of their service had been served on the salaried staff.

(b) Appointees from wages to salaried staff shall transfer their pro rata long service leave entitlement.

(4) Any officer who resigns or is retired shall, except as provided in subclause (5) of this clause, be paid for any period of 13 weeks' long service leave which may be accrued at the time of resignation or retirement. The time of resignation or retirement means that last day such officer attended for work.

(5) Any officer who retired or is retired upon reaching the age of 55 years or over, or through ill-health shall be paid for any period of 13 weeks' long service leave which may be accrued at the time of retirement, and in addition thereto shall be paid any pro rata amount which may be due by reason of further service.

(6) Any officer dismissed by the employer shall not be entitled to payment in respect of long service other than for any period of 13 weeks' long service leave which may have accrued due to such officer prior to the date of the offence for which such officer was dismissed.

(7) An officer who resigns on becoming pregnant, and then only on the production of a medical certificate, and has completed no less than three years qualifying service shall be granted pro rata of the long service leave due at the date of termination.

(8) Officers shall take their leave at a time convenient to the employer and shall be given at least one month's notice of the date upon which such leave is to be taken.

(9) No officer is to undertake during long service leave without the written approval of the employer, any form of employment for hire or reward. Contravention of this subclause may be followed by dismissal.

(10) Any period of long service leave entitlement granted to an officer under the provisions of subclause (1) of this clause shall be regarded as service in the calculation of any future entitlement.

(11) (a) Long service leave shall be taken within three years of it becoming due, at the convenience of the employer. Provided that the employer may approve the deferment of long service leave in exceptional circumstances. Provided further that such exceptional circumstances shall include retirement within five years of the date of entitlement.

(b) Officers with an entitlement to long service leave and who became eligible for that leave on or before 6 March 1985 will be required to clear at least one full leave entitlement before 6 March 1991. Provided, however, that officers who had a full leave entitlement as at 5 December 1978 and who are to retire before 6 March 1995 will not be required to clear such leave to which they had an entitlement on 5 December 1978.

22.—SICK LEAVE

(1) For the purposes of this clause "service" shall not include—

- (a) any period exceeding 14 calendar days during which an officer is absent on leave without pay. In the case of leave without pay which exceeds 14 calendar days, the entire period of such leave without pay is exercised in full;
- (b) any period which exceeds six months in one continuous period during which an officer is absent on workers' compensation. Provided that only that portion of such continuous absence which exceeds six months shall not count as "service";
- (c) any period which exceeds three months in one continuous period during which an officer is absent on sick leave without pay. Provided that only that portion of such continuous absence which exceeds three months shall not count as "service".

(2) In the case of personal illness or injury of an officer the employer shall grant the officer leave of absence in accordance with the provisions contained in this clause.

(3) An officer applying for sick leave shall apply on the form approved by the employer and shall indicate on the application the nature of the illness and shall indicate on the application that such action has been taken.

(4) The basis for determining the entitlement to leave of absence on the grounds of illness which an officer may be granted shall be ascertained by crediting the officer concerned with the following sick leave credits, which shall be cumulative—

	Leave On Full Pay (Hours)	Leave On Half Pay (Hours)
On date of appointment	37.5	15
On completion of six months' continuous service	37.5	22.5
On completion of 12 months' continuous service and on completion of each further period of 12 months' continuous service	75	37.5

Provided that those officers required to work a 38 hour week shall have their entitlements adjusted accordingly.

(5) (a) An application for sick leave exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, when the nature of the illness consists of a dental condition and the period of absence does not exceed five consecutive working days, by the certificate of a registered dentist.

(b) Where a medical certificate is required in accordance with paragraph (a) of this subclause such certificate must—

- (i) be on the normal letterhead stationery of the medical practitioner or dentist; and
- (ii) include the name of the officer to whom it is issued; and
- (iii) indicate the period during which the officer is or was unfit to perform the officer's normal duties.

(6) The number of days sick leave which may be granted without production of the certificate required by paragraph (a) of subclause (5) of this clause shall not exceed, in the aggregate, five working days in any one credit year.

(7) Where an application for leave is supported by the certificate of a registered medical practitioner, a further certificate from the Executive Director, Public Health and Scientific Support Services or a registered Medical Practitioner nominated by the Executive Director may be required and if that certificate does not confirm or substantially confirm the certificate of the medical practitioner, the officer making the application for sick leave shall pay the fee due to the nominated medical practitioner in respect of the certificate.

(8) Where the employer has occasion to doubt the cause of illness or the reason for the absence the employer may arrange for a registered medical practitioner to visit and examine the officer or may direct the officer to attend the registered medical practitioner for examination. If the report of the medical practitioner does not confirm that the officer is ill or if the officer is not available for examination at the time of the visit of the medical practitioner or if the officer fails, without reasonable cause to attend the medical practitioner when directed to do so, the fee payable for the examination, appointment or visit shall be paid by the officer.

(9) Where an officer is ill during the period of annual leave for a period of at least seven consecutive calendar days; or long service leave for a period of at least 14 consecutive calendar days and produces at the time or as soon as possible thereafter medical evidence satisfactory to the employer that the officer is or was as a result of the illness confined to the officer's place of residence or a hospital, the employer may grant sick leave for the period during which the officer was so confined and reinstate annual or long service leave equivalent to the period of confinement.

(10) Where an officer is absent on account of illness and that officer's entitlement to sick leave on full pay is exhausted, the officer may elect to convert any part of the entitlement to sick leave on half pay to sick leave on full pay, but so that the officer's sick leave entitlement on half pay is reduced by two hours for each hour of sick leave on full pay that the officer receives by the conversion.

(11) An officer who is absent on leave without pay is not eligible for sick leave during the currency of that leave without pay.

(12) No sick leave shall be granted with pay if the illness or injury has been caused by the misconduct of the officer or in any case of absence from duty without sufficient cause.

(13) An officer, who has resigned, is subsequently reappointed such officer shall for the purposes of this clause be regarded as a new appointee as from the date of reappointment.

(14) Where an officer who has been retired on medical grounds resumes duty, sick leave credits at the date of retirement shall be reinstated.

(15) (a) If the employer has reason to believe that an officer is in such a state of health as to render him a danger to fellow officers or the public, the employer may require the officer to obtain and furnish a report as to the officer's condition from a registered medical practitioner or may require the officer to submit him/herself for examination by a medical practitioner nominated by the employer. The fee for any such examination shall be paid by the employer;

(b) Upon receipt of the medical report, the employer may direct the officer to be absent from duty for a specified period or, if already on leave of absence, direct the officer to continue on leave for a specified period. Such leave shall be regarded as sick leave.

(16) (a) Upon report by a registered medical practitioner that, by reason of contact with a person suffering from an infectious disease and through the operation of restrictions imposed by Commonwealth or State law in respect of that disease, an officer is unable to attend for duty, the officer concerned may be granted sick leave or, at the option of the officer, the whole or any portion of the leave may be deducted from accrued annual leave or long service leave;

(b) Leave granted under paragraph (a) of this subclause shall not be granted for any period beyond the earliest date at which it would be practicable for the officer to resume duty, having regard to the restrictions imposed by law.

(17) Where an officer suffers a disability within the meaning of Section 5 of the Workers' Compensation and Assistance Act, 1981 where the claim for Workers' Compensation is decided in favour of the officer, sick leave credits are to be reinstated and the period of absence granted as sick leave without pay.

(18) (a) An officer who produces a certificate from the Department of Veterans' Affairs stating that the officer suffers from war caused illness, may be granted special sick leave credits of 15 working days per annum on full pay in respect of that war caused illness. These credits shall accumulate up to a maximum credit of 45 working days, and shall be recorded separately to the officer's normal sick leave credits.

(b) Every application for sick leave for war caused illness shall be supported by a certificate from a registered medical practitioner as to the nature of the illness.

(19) Where an officer was, immediately prior to being employed in the public authority, employed in the service of the public service of Western Australia or any other State body of Western Australia and the period between the date when the officer ceased previous employment and the date of commencing employment in the public authority does not exceed one week or such other period as approved by the employer, the employer may credit that officer additional sick leave credits up to those held at the date the officer ceased previous employment.

(20) (a) Any holidays prescribed as gazetted public service holidays or the days observed in lieu thereof falling during an officer's period of sick leave shall be treated as part of that leave except where an officer resumes duty on the next working day following any such holiday.

(b) Any officer appointed from the wages staff shall be entitled to retain any sick leave entitlement which such officer may have accrued, and from the date of such appointment that officer shall then be entitled to the benefits of the provisions of this clause.

(c) The provisions of subclause (17) of this clause shall not apply should an officer who has retired, or left the employer on the grounds of ill health resume duty with the employer.

23.—MATERNITY LEAVE

(1) A pregnant officer shall, no later than ten weeks before the expected date of birth make application to the employer for maternity leave for a period not exceeding 12 months. Every application for maternity leave shall be supported by the certificate of a registered medical practitioner and such certificate shall indicate the expected date of birth.

(2) The employer may grant the officer up to 12 months maternity leave. Subject to subclause (3) of this clause, the minimum period of absence on maternity leave shall commence six weeks before the expected date of birth or such other time as may be expressly approved by the employer and end six weeks after the day on which the birth has taken place.

(3) An officer may apply to the employer to resume duty within the six weeks after the day on which the birth has taken place and the employer may approve the application provided the application is supported by the certificate of a registered medical practitioner indicating that the officer is fit to resume duty.

(4) An officer may at any time whilst she is absent from duty on maternity leave, make application to extend or reduce the period referred to in the original application, but so that the amended period complies with the requirements of subclauses (2) and (3) of this clause and the employer may grant permission in accordance with the amended application.

(5) Nothing contained in this clause prevents the grant of accrued annual leave or long service leave to an officer in respect of the whole or any part of the period referred to in subclause (2) of this clause.

(6) Except by reason of the grant of accrued annual leave or long service leave an officer is not entitled to salary in respect of the period of absence from duty permitted in accordance with this clause.

(7) Absence of an officer which has been permitted in accordance with the provisions of this clause shall not be deemed absence on sick leave.

(8) A pregnant officer who has not applied for leave in accordance with the provisions of this clause shall (unless express approval of the employer has been given for continued employment), be deemed to have resigned six weeks before the date of birth.

24.—LEAVE WITHOUT PAY

(1) Where the employer is satisfied that there is sufficient cause for doing so, the employer may grant an officer leave of absence without pay for any period provided that—

- (a) the work of the employer is not inconvenienced; and
- (b) all other leave credits of the officer are exhausted.

(2) Any period that exceeds two weeks during which an officer is on leave of absence without pay shall not, for any purpose, be regarded as part of the period of service of that officer.

(3) The employer may grant an officer leave without pay to undertake full time study, subject to a yearly review of satisfactory performance. Unless the employer otherwise determines any leave granted under this subclause it shall not count as qualifying service for leave purposes.

(4) Subject to the provisions of subclause (1) of this clause, the employer may grant an officer who has been awarded a sporting scholarship by the Australian Institute of Sport, leave without pay. Leave without pay for this purpose shall count as qualifying service for all purposes except annual leave.

25.—STUDY LEAVE

(1) (a) Notwithstanding the provisions contained in this clause, at the discretion of the employer an officer may be granted time off with pay for part-time study purposes.

(b) Time off with pay may be granted up to a maximum of five hours per week including travelling time, where subjects of approved courses are available during normal working hours, or where approved study by correspondence is undertaken, in remote locations lacking the required educational facilities.

(c) External students based in remote locations, who are obliged to attend educational institutions for compulsory sessions during vacation periods, may be granted time off with

pay including travelling time up to the maximum annual amount allowed to an officer in the metropolitan area.

(d) Officers shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

(e) In every case the approval of time off to attend lectures and tutorials will be subject to—

- (i) departmental convenience;
- (ii) the course being undertaken on a part-time basis;
- (iii) officers undertaking an acceptable formal study load in their own time;
- (iv) officers making satisfactory progress with their studies; and
- (v) the course being relevant to the officer's career in the authority and being of value to the State.

(2) (a) For the purposes of this clause, the following shall be considered approved courses of study—

- (i) first degree courses at the University of Western Australia, Murdoch University and Curtin University of Technology;
- (ii) first degree or Associate Diploma courses at a College of Advanced Education;
- (iii) diploma courses at the Technical Education Division of the Education Department;
- (iv) two year full-time Certificate courses at the Technical Education Division of the Education Department;
- (v) courses recognised by the National Authority for the Accreditation of Translators and Interpreters.

(b) Except as outlined in paragraph (d) of subclause (2) of this clause, officers are not eligible for study leave if they already possess one of the qualifications specified in sub-paragraphs (i) and (ii) of paragraph (a) of subclause (2) of this clause.

(c) An officer who has completed a Diploma through the Technical Education division, is eligible for study leave to undertake a degree course at any of the tertiary institutions listed in sub-paragraphs (i) or (ii) of paragraph (a) of subclause (2) of this clause. An officer who has completed a two year full-time Certificate through the Technical Education Division, is eligible for study leave to undertake a Diploma course specified in sub-paragraph (ii) of paragraph (a) of subclause (2) of this clause or a degree or Associate Diploma course specified in sub-paragraphs (i) or (ii) of paragraph (a) of subclause (2) of this subclause.

(d) Leave to undertake additional qualifications including second or higher degrees may be granted in special cases such as a graduate embarking on a post graduate Diploma in Administration or a Masters Degree in Business Administration or a higher degree in a specialist area of benefit to the Service as well as the officer.

(3) For the purposes of this clause—

- (a) an acceptable part-time study load should be regarded as not less than five hours per week of formal tuition with at least half of the total formal study commitment being undertaken in the officer's own time, except in special cases such as where the officer is in the final year of study and requires less time to complete the course, or the officer is undertaking the recommended part-time year or stage and this does not entail five hours' formal study;
- (b) travelling time returning home after lectures or tutorials is to be calculated as the excess time taken to travel home from such classes, compared with the time usually taken to travel home from the officer's normal place of work.

(4) Unless the employer otherwise approves, officers shall not be granted more than five hours per week off with pay.

(5) Time off with pay for those who have failed a unit or units of study may be considered for one repeat year only.

(6) A first degree or Associate Diploma course does not include the continuation of a degree or Associate Diploma towards a higher post graduate qualification.

(7) (a) Employers are to meet the payment of higher education administrative charges for cadets and trainees who, as a

condition of their employment, are required to undertake studies at a University or College of Advanced Education. Officers who of their own volition attend such institutions to gain higher qualifications will be responsible for the payment of fees.

(b) This assistance does not include the cost of text books or Guild and Society fees.

(c) An officer who is required to repeat a full academic year of the course will be responsible for payment of the higher education fees for that particular year.

26.—SHORT LEAVE

(1) The employer may, upon sufficient cause being shown, grant an officer leave of absence not exceeding two consecutive working days but any leave of absence granted shall not exceed, in the aggregate, three working days in any one calendar year.

(2) An officer who desires short leave shall except in emergency situations, make written application, in a form approved by the employer for the purpose, prior to the commencement of such leave.

(3) Short leave shall not be granted for sick leave purposes.

27.—LEAVE TO ATTEND UNION BUSINESS

(1) (a) The employer shall grant paid leave during ordinary working hours to an officer—

- (i) who is required to give evidence before any Industrial Tribunal;
- (ii) who as a Union nominated representative is required to attend negotiations and/or conferences between the Union and the employer;
- (iii) when prior agreement between the Union and the employer has been reached for the officer to attend official Union meetings preliminary to negotiations or industrial hearings;
- (iv) who as a Union-nominated representative is required to attend joint Union/management consultative committees or working parties.

(b) The granting of leave pursuant to paragraph (a) of this subclause shall only be approved,

- (i) where an application for leave has been submitted by an officer a reasonable time in advance;
- (ii) for the minimum period necessary to enable the Union business to be conducted or evidence to be given;
- (iii) for those officers whose attendance is essential;
- (iv) when the operation of the organisation is not being unduly affected and the convenience of the employer impaired.

(2) (a) A leave of absence provided under this clause will be granted at the ordinary rate of pay.

(b) The employer shall not be liable for any expenses associated with an officer attending to Union business.

(c) Leave of absence provided under this clause shall include any necessary travelling time in normal working hours.

(3) (a) Nothing in this clause shall diminish the existing arrangements relating to the granting of paid leave for Union business.

(b) The provisions of this clause shall not apply to special arrangements made between the parties which provide for unpaid leave for officers to conduct Union business.

(4) The provisions of this clause shall not apply when an officer is absent from work without the approval of the employer.

28.—TRADE UNION TRAINING LEAVE

(1) Subject to the provisions of this clause—

- (a) The employer shall grant paid leave of absence to officers who are nominated by the Union to attend short courses conducted by the Australian Trade Union Training Authority.
- (b) Paid leave of absence shall also be granted to attend similar courses or seminars as from time to time approved by agreement between the employer and the Union.

(2) An officer shall be granted up to a maximum of five days' paid leave per calendar year for trade union training or

similar courses or seminars as approved. However, leave of absence in excess of five days and up to ten days may be granted in any one calendar year provided that the total leave being granted in that year and in the subsequent year does not exceed ten days.

(3) (a) Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

(b) Where a holiday as prescribed in Clause 20.—Public Holidays or rostered day off falls during the duration of a course, a day off in lieu of that day will not be granted.

(c) Subject to paragraph (a) of subclause (3) of this clause, shift workers attending a course shall be deemed to have worked the shifts they would have worked had leave not been taken to attend the course.

(4) The granting of leave pursuant to the provisions of subclause (1) of this clause is subject to the operation of the organisation not being unduly affected and to the convenience of the employer.

(5) (a) Any application by an officer shall be submitted to the employer for approval at least four weeks before the commencement of the course, provided that the employer may agree to a lesser period of notice.

(b) All applications for leave shall be accompanied by a statement from the Union indicating that the officer has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the authority which is conducting the course.

(6) A qualifying period of 12 months in Government employment shall be served before an officer is eligible to attend courses or seminars of more than a half day duration. The employer may, where special circumstances exist, approve an application to attend a course or seminar where an officer has less than 12 months' Government service.

(7) (a) The employer shall not be liable for any expenses associated with an officer's attendance at trade union training courses.

(b) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course.

29.—LEAVE FOR TRAINING WITH THE DEFENCE FORCE RESERVES

(1) Subject to the employer's convenience, leave of absence may be granted by the employer to an officer who is a volunteer member of the Defence Force Reserves or the Cadet Force for the purpose of attending a training camp, school, class or course of instruction under the conditions contained in this clause.

(2) (a) In order to attend at a camp for annual continuous obligatory training, an officer may be granted one period of not exceeding ten working days on full pay in any period of 12 months commencing on and from 1 July in each year.

(b) If the Officer-in-Charge of a unit certifies that it is essential for an officer to be at the camp in an advance or rear party, a maximum of four extra days on full pay may be granted in a 12 month period.

(3) For attendance at one special school, class or course of instructions—

(a) in addition to the leave granted under subclause (1) of this clause, a period not to exceed 16 calendar days in any period of 12 months commencing on and from 1 July, in each year may be granted provided that the employer must be satisfied that the leave required is for a special purpose and not for a further routine camp;

(b) this leave may, at the option of the officer, be granted from annual recreation leave due;

(c) if the leave is not taken from accrued annual leave, salary during the period shall be at the rate of difference between the normal remuneration of the officer and the defence force payment to which the officer is entitled if this does not exceed normal pay from the employer. In calculating the pay differential, pay for Saturdays, Sundays, and public holidays prescribed in Clause 20.—Public Holidays of this Award

and special rostered days off is to be excluded, and no account is to be taken of the value of any board or lodging provided for the officer;

(d) leave without pay shall be granted if the defence force payments exceed the normal pay of the officer.

(4) (a) Application for leave of absence for the above reasons shall, in all cases, be accompanied by evidence of the necessity for attendance. At the expiration of the leave of absence granted, the officer shall furnish a certificate of attendance to the employer. Where leave of absence has been granted with pay at the rate of difference between normal remuneration and defence force payment, the officer shall also furnish a detailed certificate of the defence force payment received.

(b) On written application, an officer shall be paid salary in advance when proceeding on such leave.

(c) Where annual leave is not utilised for attendance at a special school or course the period shall be treated as leave without pay and then adjusted for the pay differential when the certificate of attendance and payment is received.

30.—CAMPING ALLOWANCE

Not applicable to Transperth.

31.—DISTRICT ALLOWANCE

Not applicable to Transperth.

32.—DISTURBANCE ALLOWANCE

Not applicable to Transperth.

33.—DIVING ALLOWANCE

Not applicable to Transperth.

34.—FLYING ALLOWANCE

Not applicable to Transperth.

35.—MOTOR VEHICLE ALLOWANCE

(1) For the purposes of this clause the following expressions shall have the following meaning—

“a year” means 12 months commencing on the 1st day of July and ending on the 30th day of June next following.

“metropolitan area” means that area within a radius of 50 kilometres from the Perth Railway Station.

“southwest land division” means the southwest land division as defined by section 28 of the Land Act, 1933-1972 excluding the area contained within the metropolitan area.

“rest of the state” means that area south of 23.5 degrees south latitude, excluding the metropolitan area and the southwest land division.

“term of employment” means a requirement made known to the officer at the time of applying for the position by way of publication in the advertisement for the position, written advice to the officer contained in the offer for the position or oral communication at interview by interviewing officer and such requirement is accepted by the officer either in writing or orally.

“qualifying service” shall include all service in positions where there is a requirement as a term of employment to supply and maintain a motor vehicle for use on official business but shall exclude all absences which effect entitlements as provided by Schedule H of this Award.

(2) (a) An officer who is required to supply and maintain a motor vehicle for use when travelling on official business as a term of employment shall be reimbursed in accordance with the appropriate rates set out in Part I of Schedule H of this Award for journeys travelled on official business and approved by the employer or an authorised officer.

(b) An officer who is reimbursed under the provisions of paragraph (a) of subclause (2) of this clause will also be subject to the following conditions—

(i) for the purposes of paragraph (a) of subclause (2) of this clause an officer shall be reimbursed with the appropriate rates set out in Part I of Schedule H of this Award for the distance travelled from the officer's residence to the place of duty and for the return distance travelled from place of duty to residence except on a day where the officer travels direct from

residence to headquarters and return and is not required to use the vehicle on official business during the day;

- (ii) where an officer in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in Part I of Schedule H of this Award;
- (iii) where an officer does not travel in excess of 4,000 kilometres in a year an allowance calculated by multiplying the appropriate rate per kilometre by the difference between the actual distance travelled and 4,000 kilometres shall be paid to the officer provided that where the officer has less than 12 months' qualifying service in the year then the 4,000 kilometre distance will be reduced on a pro rata basis and the allowance calculated accordingly;
- (iv) where a part-time officer is eligible for a payment of an allowance under sub-paragraph (iii) of paragraph (b) of subclause (2) of this clause such allowance shall be calculated on the proportion of total hours worked in that year by the officer to the annual standard hours had the officer been employed on a full-time basis for the year;
- (v) an officer who is required to supply and maintain a motor vehicle for use on official business is excused from this obligation in the event of his vehicle being stolen, consumed by fire, or suffering a major and unforeseen mechanical breakdown or accident, in which case all entitlement to reimbursement ceases while the officer is unable to provide the motor vehicle or a replacement;
- (vi) the employer may elect to waive the requirement that an officer supply and maintain a motor vehicle for use on official business, but three months' written notice of the intention so to do shall be given to the officer concerned.

(3) (a) Subject to subclause (2) of this clause, an officer who is not normally required to supply and maintain a motor vehicle as a term of employment and who is required to relieve an officer required to supply and maintain a motor vehicle as a term of employment shall be reimbursed all expenses incurred in accordance with the appropriate rates set out in Part I of Schedule H of this Award for all journeys travelled on official business and approved by the employer where the officer is required to use the vehicle on official business whilst carrying out the relief duty.

(b) For the purposes of paragraph (a) of this subclause an officer shall be reimbursed all expenses incurred in accordance with the appropriate rates set out in Part I of Schedule H of this Award for the distance travelled from the officer's residence to place of duty and the return distance travelled from the place of duty to residence except on a day where the officer travels direct from residence to headquarters and return and is not required to use the vehicle on official business during the day.

(c) Where an officer in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in Part I of Schedule H of this Award.

(d) For the purpose of this subclause the allowance prescribed in sub-paragraphs (iii), (iv) and (vi) of paragraph (b) of subclause (2) of this clause shall not apply.

(4) (a) An officer who is not required to supply and maintain a motor vehicle for use when travelling on official business as a term of employment, but when requested by the employer voluntarily consents to use the vehicle shall for journeys travelled on official business approved by the employer be reimbursed all expenses incurred in accordance with the appropriate rates set out in Parts II and III of Schedule H of this Award.

(b) For the purpose of paragraph (a) of this subclause an officer shall not be entitled to reimbursement for any expenses incurred in respect to the distance between the officer's residence and headquarters and the return distance from headquarters to residence.

(c) Where an officer in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in Part II of Schedule H of this Award if applicable.

(5) In cases where officers are required to tow departmental caravans on official business, the additional rate shall be three cents per kilometre. When departmental trailers are towed on official business the additional rate shall be two cents per kilometre.

36.—PROPERTY ALLOWANCE

Not applicable to Transperth.

37.—PROTECTIVE CLOTHING

An officer engaged on work which requires the provision of protective clothing shall be—

- (a) provided with the requisite protective clothing, with the laundering costs for such protective clothing being at the expense of the employer; or
- (b) provided with an annual allowance, as agreed between the Union and the employer, which shall incorporate the cost of purchase and laundry of the requisite protective clothing.

Provided that nothing contained in this clause shall affect the obligations of the employer to provide clothing pursuant to the Occupational Health, Safety and Welfare Act, 1984.

Any officer required to wear a uniform shall be supplied with same free of cost and as agreed between the parties to this award. Any dispute arising as to the issue of uniforms may be referred to the Board of Reference as prescribed in Clause 6.—Definitions.

38.—RELIEVING ALLOWANCE

Not applicable to Transperth.

39.—REMOVAL ALLOWANCE

Not applicable to Transperth.

40.—SEA-GOING ALLOWANCE

Not applicable to Transperth.

41.—TRANSFER ALLOWANCE

Not applicable to Transperth.

42.—TRAVELLING ALLOWANCE

(1) An officer who travels on official business shall be reimbursed reasonable expenses according to the provisions contained in this clause.

(2) When a trip necessitates an overnight stay away from headquarters and the officer—

- (a) is supplied with accommodation and meals free of charge; or
- (b) attends a course, conference, etc., where the fee paid includes accommodation and meals; or
- (c) travels by rail and is provided with a sleeping berth and meals; or
- (d) is accommodated at a Government institution, hotel or similar establishment and supplied with meals,

reimbursement shall be in accordance with the rates prescribed in Column A, Item 1, 2 or 3 of Schedule J of this Award.

(3) When a trip necessitates an overnight stay away from the officers headquarters and the officer is fully responsible for the provision of accommodation, meals and incidental expenses—

- (a) where hotel or motel accommodation is utilised reimbursement shall be in accordance with the rates prescribed in Column A, Items 4 to 8 of Schedule J—
- (b) where other than hotel or motel accommodation is utilised reimbursement shall be in accordance with rates prescribed in Column A, Items 9, 10 or 11 of Schedule J.

(4) When a trip necessitates an overnight stay away from headquarters and accommodation only is provided at no charge to the officer, reimbursement shall be made in accordance with the rates prescribed in Column A, Items 1, 2 or 3 and Items 12, 13 or 14 of Schedule J of this Award subject to the employees' certification that each meal claimed was actually purchased.

(5) To calculate reimbursement under subclauses (1) and (2) of this clause for a part of a day, the following formula shall apply—

- (a) If departure from headquarters is—
- before 8.00am—100% of the daily rate.
 - 8.00am or later but prior to 1.00pm—90% of the daily rate.
 - 1.00pm or later but prior to 6.00pm—75% of the daily rate.
 - 6.00pm or later—50% of the daily rate.
- (b) If arrival back at headquarters is—
- 8.00am or later but prior to 1.00pm—10% of the daily rate.
 - 1.00pm or later but prior to 6.00pm—25% of the daily rate.
 - 6.00pm or later but prior to 11.00pm—50% of the daily rate.
 - 11.00pm or later—100% of the daily rate.

(6) When an officer travels to a place outside a radius of 50 kilometres measured from the officer's headquarters, and the trip does not involve an overnight stay away from headquarters, reimbursement for all meals claimed shall be at the rates set out in Column A, Items 12 or 13 of Schedule J of this Award subject to the officer's certification that each meal claimed was actually purchased. Provided that when an officer departs from headquarters before 8.00am and does not arrive back at headquarters until after 11.00pm on the same day reimbursement shall be at the appropriate rate prescribed in Column A, Items 4 to 8 of Schedule J of this Award.

(7) When it can be shown to the satisfaction of the employer by the production of receipts that reimbursement in accordance with Schedule J of this Award does not cover an officer's reasonable expenses for a whole trip the officer shall be reimbursed the excess expenditure.

(8) In addition to the rates contained in Schedule J of this Award an officer shall be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

(9) If, on account of lack of suitable transport facilities, an officer necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the officer shall be reimbursed the actual cost of such accommodation.

(10) Reimbursement of expenses shall not be suspended should an officer become ill whilst travelling, provided leave for the period of such illness is approved in accordance with the provisions of this Award and the officer continues to incur accommodation, meal and incidental expenses.

(11) Reimbursement claims for travelling in excess of 14 days in one month shall not be passed for payment by a certifying officer unless the employer has endorsed the account.

(12) An officer who is relieving at or temporarily transferred to any place within a radius of 50 kilometres measured from headquarters shall not be reimbursed the cost of midday meals purchased, but an officer travelling on duty within that area which requires absence from headquarters over the usual midday meal period shall be paid at the rate prescribed by Item 17 of Schedule J of this Award for each meal necessarily purchased, provided that—

- (a) such travelling is not a normal feature in the performance of the officer's duties; and
- (b) such travelling is not within the suburb in which the officer resides; and
- (c) total reimbursement under this subclause for any one pay period shall not exceed the amount prescribed by Item 18 of Schedule J of this Award.

43.—WEEKEND ABSENCE FROM RESIDENCE

Not applicable to Transperth.

44.—PRESERVATION OF RIGHTS

As a result of this Order, nothing herein contained shall in itself operate so as to detrimentally alter the conditions of

employment or salary that is the minimum prescribed in this Award or any benefit superior to any contained herein.

45.—TIME AND SALARIES RECORD

(1) The employer shall keep or cause to be kept a time and salaries record showing—

- (a) the name of each officer;
- (b) the nature of the work performed;
- (c) the hours worked each day;
- (d) the salary, allowances and overtime paid to each officer.

Any system of automatic recording by means of machines shall be deemed to comply with the provision to the extent of the information recorded.

(2) (a) The time and salary record shall on demand be produced for inspection by the Secretary or duly accredited official of the Union during the employer's usual office hours and when necessary the duly accredited official of the Union may take a copy of the record.

(b) The Union shall—

- (i) give prior notification to the employer on when it proposes to inspect the record;
- (ii) not conduct interviews during normal working hours in circumstances which will result in the employer's business being unduly interrupted or otherwise hampered; and
- (iii) treat with confidentiality any information obtained from time and salary records.

(c) The employer's office shall be deemed to be a convenient place for the purposes of inspecting records and if for any reason the time and salary record is not available when the duly accredited official of the Union calls to inspect it, the record will be made available for inspection at a mutually convenient time at the employer's office.

(d) If the employer maintains a personal or other file on an employee subject to the employer's convenience, the employee shall be entitled to examine all material maintained on that file.

46.—NOTIFICATION OF CHANGE

(1) (a) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on officers, the employer shall notify the officers who may be affected by the proposed changes and the Union.

(b) For the purpose of this clause "significant effects" include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of officers to other work or locations and restructuring of jobs.

(2) (a) The employer shall discuss with the officers affected and the Union, inter alia, the introduction of the changes referred to in subclause (1) of this clause, the effects the changes are likely to have on officers, measures to avert or mitigate the adverse effects of such changes on officers and shall give prompt consideration to matters raised by the officers and/or the Union in relation to the changes.

(b) The discussion shall commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in subclause (1) of this clause, unless by prior arrangement, the Union is represented on the body formulating recommendations for change to be considered by the employer.

(c) For the purposes of such discussion an employer shall provide to the officers concerned and the Union all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on officers and any other matters likely to affect officers. Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be inimical to the employer's interests.

47.—RIGHT OF ENTRY

The Secretary of the Union or a duly authorised representative shall on notification to the employer have the right to enter the employer's premises during working hours, including meal breaks, for the purpose of discussing with officers covered by this Award, the legitimate business of the Union or for the purpose of investigating complaints concerning the application of this Award, but shall in no way unduly interfere with the work of officers.

48.—COPIES OF AWARD

Every officer shall be entitled to have access to a copy of this Award. Sufficient copies shall be made available by the employer for this purpose and shall be located in each of the employer's premises.

49.—WAGE FIXING PRINCIPLES

It is a term of this Award or Agreement that the Union undertakes for the duration of the Principles determined by the Commission in Court Session in Application No. 704 of 1991 not to pursue any extra claims, award or overaward except when consistent with the State Wage Principles.

50.—ESTABLISHMENT OF CONSULTATIVE MECHANISMS

The parties to this Award or Agreement are required to establish a consultative mechanism/s and procedures appropriate to their size, structure and needs, for consultative and negotiation on matters affecting the efficiency and productivity of the enterprise.

51.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of the Award so that it provides for more flexible and efficient working arrangements, enhances productivity, improves the quality of working life, skills and job satisfaction and assists positively in the restructuring process.

(2) In conjunction with testing the current Award structure the parties are prepared to discuss all matters raised by the parties for increased flexibility and efficiency. As such, any discussions with the employer must be premised on the understanding that—

- (a) the majority of employees employed in the section, branch or division must genuinely agree;
- (b) no employee will suffer a reduction in ordinary earnings as a result of the change;
- (c) the Union must be party to the agreement, in particular, where the employees at any section, branch or division are holding discussions which would require any award variation the Union shall be invited to participate.
- (d) the Union shall not unreasonably oppose any agreement;
- (e) subject to the provisions of this Award, any agreement reached may require ratification by the Commission.

(3) Should an agreement be reached pursuant to subclause (2) of this clause and that agreement requires an award variation, no party will oppose the award variation.

(4) There shall be no limitation on any award matters being raised for discussion.

52.—PASSES

Each officer shall be issued with a pass to be available over all routes operated by Transperth and subject to such conditions as may be prescribed from time to time by Transperth.

SCHEDULE A

LIST OF RESPONDENTS

Metropolitan (Perth) Passenger Transport Trust
10 Adelaide Terrace
PERTH WA 6000

Applicant

Metropolitan (Perth) Passenger Transport Trust
Officers Union of Workers
Suite 5, Labor Centre,
82 Beaufort Street,
PERTH WA 6000

SCHEDULE B

GOVERNMENT OFFICERS NOT COVERED BY THE SCOPE OF THIS AWARD

Not applicable to Transperth

SCHEDULE C

LIST OF AWARDS/AGREEMENTS REPLACED BY THIS AWARD

Not applicable to Transperth

SCHEDULE D

SALARIES

Annual salaries applicable to officers covered by this Award.

Level	Salary Per Annum	1st & 2nd Arbitrated Safety Net Adjustment	Total	
Age	Year	\$	\$	
<u>Level 1</u>				
under 17		10,445	428	10,873
17 year		12,207	500	12,707
18 years		14,238	584	14,822
19 years		16,481	676	17,157
20 years		18,507	760	19,267
21 years	or 1st year	20,331	834	21,165
22 years	or 2nd year	20,983	834	21,817
23 years	or 3rd year	21,634	834	22,468
24 years	or 4th year	22,281	834	23,115
25 years	or 5th year	22,932	834	23,766
26 years	or 6th year	23,583	834	24,417
27 years	or 7th year	24,332	834	25,166
28 years	or 8th year	24,850	834	25,684
29 years	or 9th year	25,616	834	26,450
<u>Level 2</u>				
1st year		26,533	834	27,367
2nd year		27,236	834	28,070
3rd year		27,975	834	28,809
4th year		28,756	834	29,590
5th year		29,573	834	30,407
<u>Level 3</u>				
1st year		30,696	834	31,530
2nd year		31,571	834	32,405
3rd year		32,473	834	33,307
4th year		33,399	834	34,233
<u>Level 4</u>				
1st year		34,669	834	35,503
2nd year		35,664	834	36,498
3rd year		36,688	834	37,522
<u>Level 5</u>				
1st year		38,660	834	39,494
2nd year		39,993	834	40,827
3rd year		41,378	834	42,212
4th year		42,815	834	43,649
<u>Level 6</u>				
1st year		45,126	834	45,960
2nd year		46,697	834	47,531
3rd year		48,323	834	49,157
4th year		50,059	834	50,893

SCHEDULE E

SALARIES—SPECIFIED CALLINGS

Officers who possess a relevant tertiary level qualification, or equivalent determined by the employer and who are employed in the callings of Agricultural Scientist, Architect, Dental Officer, Education Officer, Engineer, Geologist, Laboratory Technologist, Land Surveyor, Legal Officer, Librarian, Medical Officer, Planning Officer, Probation and Parole Officer, Psychiatrist, Clinical Psychologist, Psychologist, Quantity Surveyor, Scientific Officer, Social Worker, Superintendent of Education, Therapist (Occupational, Physio or Speech), Veterinary Scientist, or any other professional

calling determined by the employer, shall be entitled to annual salaries as follows—

Level	Salary Per Annum	1st & 2nd Arbitrated Safety Net Adjustment	Total
Age Year	\$	\$	\$
Level 2/4			
1st year	26,533	834	27,367
2nd year	27,975	834	28,809
3rd year	29,573	834	30,407
4th year	31,571	834	32,405
5th year	34,669	834	35,503
6th year	36,688	834	37,522
Level 5			
1st year	38,660	834	39,494
2nd year	39,993	834	40,827
3rd year	41,378	834	42,212
4th year	42,815	834	43,649
Level 6			
1st year	45,126	834	45,960
2nd year	46,697	834	47,531
3rd year	48,323	834	49,157
4th year	50,059	834	50,893

SCHEDULE F

CAMPING ALLOWANCE

Not applicable to Transperth

SCHEDULE G

DISTRICT ALLOWANCE

Not applicable to Transperth

SCHEDULE H

MOTOR VEHICLE ALLOWANCE

PART I—MOTOR CAR

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Rate per kilometre			
Metropolitan Area			
First 4000 kilometres	95.9	83.0	70.6
Over 4000—8000 kilometres	40.6	35.4	30.8
Over 8000—16000 kilometres	22.1	19.5	17.6
Over 16000 kilometres	23.6	20.7	18.4
South West Land Division			
First 4000 kilometres	97.1	84.3	72.7
Over 4000—8000 kilometres	41.2	36.0	31.4
Over 8000—16000 kilometres	22.5	19.9	17.9
Over 16000 kilometres	23.9	21.0	18.6
North of 23.5° South Latitude			
First 4000 kilometres	109.6	95.7	82.0
Over 4000—8000 kilometres	45.6	40.1	35.0
Over 8000—16000 kilometres	24.3	21.5	19.3
Over 16000 kilometres	24.8	21.3	18.4
Rest of the State			
First 4000 kilometres	101.6	88.1	75.1
Over 4000—8000 kilometres	43.0	37.5	32.7
Over 8000—16000 kilometres	23.5	20.7	18.6
Over 16000 kilometres	24.4	21.3	19.0

PART II—MOTOR CAR

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Rate per kilometre			
Metropolitan Area	45.2	39.3	34.1
South West Land Division	45.5	40.0	34.7
North of 23.5° South Lat.	50.9	44.7	38.9
Rest of the State	47.9	41.7	36.3

PART III—MOTOR CYCLE

Distance Travelled During a year on Official Business	Rate c/km
Rate per Kilometre	15.6

SCHEDULE I

OVERTIME

PART I—OUT OF HOURS CONTRACT

Standby	\$4.96 per hour
On Call	\$2.48 per hour
Availability	\$1.24 per hour

PART II—MEALS

Breakfast	\$5.25 per meal
Lunch	\$6.50 per meal
Evening Meal	\$7.80 per meal

SCHEDULE J

CLAUSE 39—RELIEVING ALLOWANCE

CLAUSE 42—TRANSFER ALLOWANCE

CLAUSE 43—TRAVELLING ALLOWANCE

Item	Particulars	Column A Daily Rate	Column B Daily Rate Officers with Dependents: Relieving Allowance for Period in Excess of 42 days	Column C Daily Rate Officers without Dependents: Relieving Allowance for Period in Excess of 42 days
			Sub-paragraph (ii) of Paragraph (b) of Subclause (9)	Sub-paragraph (ii) of Paragraph (b) of Subclause (9)
			Transfer Allowance for period in Excess of Prescribed Period Paragraph (b) of Subclause (6)	
	Allowance To Meet Incidental Expenses			
1.	WA—South of 26° South Latitude			\$5.55
2.	WA—North of 26° South Latitude			\$8.25
3.	Interstate			\$8.25
	Accommodation Involving An Overnight Stay In A Hotel Or Motel			
		\$	\$	\$
4.	WA—Metropolitan Hotel or Motel	100.60	50.30	33.50
5.	Locality South of 26° South Latitude	79.35	39.65	26.45
6.	Locality North of 26° South Latitude			
	Broome	130.25	65.10	43.40
	Carnarvon	96.25	48.10	32.10
	Dampier	146.25	73.10	48.75
	Derby	112.25	56.10	37.40
	Exmouth	111.25	55.60	37.10
	Fitzroy Crossing	100.25	50.10	33.40
	Gascoyne Junction	74.25	37.10	24.70
	Halls Creek	110.25	55.10	36.75
	Karratha	164.25	82.10	54.75
	Kununurra	119.25	59.60	30.75
	Marble Bar	108.25	54.10	36.10
	Newman	159.25	79.60	53.10
	Nullagine	85.25	42.60	28.40
	Onslow	109.25	54.60	36.40
	Pannawonica	121.25	60.60	40.40
	Paraburdoo	156.25	78.10	52.10
	Port Hedland	146.25	73.10	48.75
	Roebourne	102.25	51.10	34.10
	Sandfire	80.25	40.10	26.75
	Shark Bay	96.25	48.10	32.10
	Tom Price	156.25	78.10	52.10
	Wickham	133.25	66.60	44.40
	Wyndham	118.25	59.10	39.40
7.	Interstate—Capital City			
	Sydney	150.50	75.25	50.15
	Melbourne	136.50	68.25	45.50
	Other Capitals	131.65	65.80	43.90

	\$	\$	\$
8. Interstate—Other than Capital City	79.35	39.65	26.45
Accommodation Involving An Overnight Stay At Other Than A Hotel Or Motel			\$
9. WA—South of 26° South Latitude			39.75
10. WA—North of 26° South Latitude			58.10
11. Interstate			58.10
Travel Not Involving An Overnight Stay			
12. WA—South of 26° South Latitude—			
Breakfast		8.15	
Lunch		8.15	
Evening Meal		17.90	
13. WA—North of 26° South Latitude—			
Breakfast		8.70	
Lunch		12.40	
Evening Meal		28.75	
14. Interstate			
Breakfast		8.70	
Lunch		12.40	
Evening Meal		28.75	
Deduction For Normal Living Expenses (Subclause 6(d))			
15. Each Adult			14.75
16. Each Child			2.55
Middy Meal			
17. Rate per meal			3.55
18. Maximum reimbursement per pay period			17.75

SCHEDULE K

SHIFT WORK ALLOWANCES

Not applicable to Transperth

SCHEDULE L

OTHER ALLOWANCES

Not applicable to Transperth

SCHEDULE M

TRAVEL CONCESSIONS FOR ANNUAL LEAVE

Not applicable to Transperth

SCHEDULE N

TRANSITION PROVISIONS (BROADBANDING)

(1) Maintenance of Salary—

Where an officer's position is downgraded or the maximum salary is reduced as at 31 May 1987 the following shall apply—

All officers appointed to a classification prior to 31 May 1987, will progress through the salary ranges applicable to that classification irrespective of the level determined by the employer.

(2) Placement of Officers—

- (a) Officers classified C.IV prior to 31 May 1987 shall maintain their existing salary and incremental date.
- (b) Officers classified C.V prior to 31 May 1987 shall be classified Level 1 under this Award on the following basis—
 - (i) Under 21 years of age—age to age.
 - (ii) Officers 21 years of age and older—salary on promotion.
- (c) Officers who are not qualified for promotion and whose salary ranges prior to 31 May 1987 were in excess of the 24 year old rate of salary for Level 1 under this Award shall be entitled to progress through the Level 1 range. Provided that this position shall also apply to officers classified C.III.1 prior to 31 May 1987.

(3) Efficiency and Personal Allowances—

Officers in receipt of efficiency and personal allowances at 31 May 1987 shall have the allowances included as salary when determining placement under this Award.

(4) Qualifications Allowance—

- (a) Officers in receipt of a qualifications allowance at 31 May 1987 or who would have become entitled to such allowance, or increase in such allowance as a result of studies completed in the 1987 calendar year, shall continue to receive or be granted such allowance, or increase in such allowance provided that such allowance shall cease once an officer is in receipt of a salary exceeding the first point of Level 5.

\$
Per Annum

Degree or Associateship of Economics, Business Administration, Engineering, Management Accounting, Social Studies or Public Administration, etc. 292

Diploma of Transport Management 292

Diploma of Accountancy, Engineering, Management Studies, Social Studies, Psychological Studies or Personnel Management, etc. 195

Certificate (3 years' study minimum) of Functional Management, Management, Personnel Management, Office Management or Advanced Supervision, etc. 98

Certificate of Automotive Engineering 78

Certificate of Supervision (2 years' study minimum) cash award 30

- (b) Officers who are not entitled to a qualifications allowance pursuant to paragraph (a) of this subclause or who attain a higher qualification subsequently shall not be entitled to receive an allowance or increase in the allowance.

(5) Officer Supporting Dependents Allowance—

- (a) Officers previously classified C.IV or C.V who were in receipt of an allowance of one increment for wholly supporting a spouse and/or dependent relatives prior to 31 May 1987 shall, if classified Level 1 under this Award, continue to receive such allowance of one increment whilst wholly or substantially supporting a spouse and/or dependent relative. Provided that the maximum remuneration inclusive of such allowance shall be the rate of salary at age 27 or seventh year of adult service in respect of officers previously classified C.IV, and age 24 or fourth year of adult service in respect of officers previously classified C.V.
- (b) Payment of the officer supporting dependents allowance shall cease should an officer be promoted or reclassified above Level 1.
- (c) This provision shall not apply to an officer who was not in receipt of the officer supporting dependents allowance at 31 May 1987.

(6) Higher Duties—

- (a) Officers classified C.III, C.IV or C.V who were acting in a C.II.1 position or above immediately prior to 31 May 1987 and who had been so acting for in excess of 12 months in the preceding 18 months, shall be deemed appointed a the C.II.1 classification.
- (b) Where an officer was acting in a position classified higher than the officers substantive position prior to 31 May 1987 and who continues to act in the same position immediately after 31 May 1987, the officer shall receive a higher duties allowance equivalent to the salary that would have been payable to the permanent occupant.

Provided that should the officer cease to act in that higher classified position, any future periods of acting in the same position or other positions classified higher than the officer's substantive classification shall be paid higher duties allowance in accordance with Clause 14.—Higher Duties Allowance of this Award.

(7) Incremental Dates—

- (a) Where immediately prior to 31 May 1987 an officer was in receipt of a salary that equates to a salary under this Award and the officer is classified at that level, the officer will remain on that salary and retain the officer's current incremental date, with the exception that if the officer has been on the salary for 12 months or more the officer will progress to the next salary point within the level and 31 May will become the new incremental date.
- (b) An officer who immediately prior to 31 May 1987 was in receipt of a salary which does not equate to a salary under this Award shall be placed on the nearest salary point higher and this date shall become the officer's new incremental date.

(8) Library Assistants—

Library Assistants employed prior to 31 May 1987 shall be placed at the same or nearest salary point higher in Level 1 or 2 under this Award. Provided that all Library Assistants employed prior to 31 May 1987 shall be allowed to progress to the first increment of Level 2 under this Award subject to the provisions of subclause (1) of Clause 12.—Annual Increments of this Award without the need for qualifications.

This provision shall not apply to officers appointed on or after 31 May 1987.

(9) Notwithstanding Clause 4.—Scope of this Award the provisions of subclause (2) of clause 4 of this Award shall apply to officers classified as C.II.7 immediately prior to 31 May 1987, until such time as those officers attain a salary exceeding the first point of Level 5.

(10) Notwithstanding Clause 18.—Overtime of this Award, the provisions of paragraph (j) of this clause shall apply to officers classified as C.II.6 immediately prior to 31 May 1987, until such time as those officers attain a salary exceeding the first point of Level 4.

consideration and sensitivity in dealings with Accommodation Manager Helen Braham.

During the proceeding, the Board has heard from 12 witnesses. It has examined substantial quantities of documentation and has heard submissions from the advocates representatives.

Our impression of the important issues are as follows—

- That words similar to those complained of were, or were likely to have been used by Mr Wood;
- That the overwhelming view of the witnesses was that the language used was not intended to hurt;
- We are assisted in this conclusion by the evidence as to character presented by the witnesses called on behalf of Mr Wood. In addition, we have a number of written testimonials from which we conclude that Mr Wood has well developed skills and understanding in dealing with aboriginal people.
- Homeswest was entitled to find that the words, or words like those complained of, had been used but it should in reaching a decision as to penalty taken into account that Mr Wood had been directed to performance manager Helen Braham and this enhanced the potential for difficulty between them. Homeswest should have responded to Ms Braham's calls for assistance when she raised difficulties to senior management.
- When assessing the penalty, greater investigation should be made into Mr Wood's track record and past performance in the area of communication with aboriginal people.

We conclude that penalty which amounts to a fine of \$4,000 per year until Mr Wood regains his previous classification, if he ever does, is too severe.

Therefore, in accordance with the powers vested in us by the Act, we will quash the penalties awarded by the Executive Director and in place will order that Mr Wood be reprimanded.

In the circumstances for the good management of the Port Hedland Regional office and for the welfare of individuals involved, we recommend that Mr Wood be transferred to another suitable position within Homeswest at Level 5.3.

We acknowledge that Mr Wood has been on annual leave and sick leave, but we make no orders concerning that.

Appearances: Ms D. Whitaker appeared for the applicant

Ms M. Newton (of counsel) appeared on behalf of the respondent.

PUBLIC SERVICE APPEAL BOARD—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Harold Leslie Wood
and

Executive Director Homeswest.

No. PSAB 5 of 1997.

PUBLIC SERVICE APPEAL BOARD
PUBLIC SERVICE ARBITRATOR J. F. GREGOR,
CHAIRPERSON
MR ALAN MATHIE, BOARD MEMBER
MR CRAIG HILLS, BOARD MEMBER.

26 August 1997.

Reasons for Decision.

These are the findings of this Board. In delivering our decision so soon after the hearing, which we do at the best interests of the parties, we retain the right to issue full reasons for decision later.

This appeal arises after a decision by Homeswest to regress Harry Wood from Level 5 to Level 3 and to transfer him from Port Hedland to Perth forthwith.

The Order for regression was by the Executive Director of Homeswest following the investigation of charges that had been laid against Mr Wood in accordance with s.86 of the PSM Act 1994.

The charges each allege that Mr Wood made grossly offensive remarks and that he failed to act with property courtesy,

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Harold Leslie Wood
and

Executive Director Homeswest.

No. PSAB 5 of 1997.

PUBLIC SERVICE APPEAL BOARD
PUBLIC SERVICE ARBITRATOR J. F. GREGOR,
CHAIRPERSON
MR ALAN MATHIE, BOARD MEMBER
MR CRAIG HILLS, BOARD MEMBER.

26 August 1997.

Order.

Having heard Ms D. Whitaker on behalf of the applicant and Ms M. Newton, of counsel, on behalf of the respondent, the Public Service Appeal board pursuant to the powers conferred on it, hereby orders—

1. THAT the decision of Homeswest to demote Mr Wood from Level 5 to Level 3 and transfer him is hereby quashed; and
2. THAT Mr Wood is hereby reprimanded.

(Sgd.) J. F. GREGOR,

[L.S.]

Public Service Arbitrator
Chairman, Public Service Appeal Board.

NOTICES— Union matters—

Industrial Relations Act 1979.

PUBLICATION OF APPLICATION PURSUANT TO SECTION 72A

Application Number 1442 of 1997 has been lodged pursuant to Section 72A of the Industrial Relations Act 1979 by the Civil Service Association of Western Australia (Incorporated) and is published hereunder.

The application has been listed before the Full Bench at 10.30am on the 3rd and 4th of November 1997.

Any person who wishes to be heard shall file a notice of application to be heard in accordance with Form 1, setting out the grounds upon which the person claims sufficient interest to be heard in relation to the application and serve it on the applicant at least 7 days before the above date of hearing in accordance with Regulation 101A of the Industrial Relations Commission Regulations 1985.

J. A. SPURLING,
Registrar.

3rd September 1997.

Form 1

Industrial Relations Act 1979.

IN THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

No. 1442 of 1997

NOTICE OF APPLICATION

TO: Not Applicable

TAKE NOTICE THAT: the CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (Incorporated) of 445 Hay Street, Perth, Western Australia, 6001 has this day applied to the FULL BENCH

for ...ORDERS PURSUANT TO SECTION 72A OF THE ACT TO THE FOLLOWING AFFECT: SEE SCHEDULE "A"

The grounds on which the application is made are: See SCHEDULE "B"



(Sgd.) D. Whittaker,

Applicants signature.

NOTE 1: This notice must be completed by the applicant, signed and, where necessary, sealed by him, and a written statement of claim or other adequate description of the subject matter of the application must be attached.

NOTE 2: No answering statement is required.

SCHEDULE "A"

ORDERS SOUGHT

1. The Civil Service Association of Western Australia (Incorporated) ("CSA") seeks an Order that it has the right to represent the Industrial interests of salaried employees (including professional, administrative, clerical, technical, and supervisory employees) employed by the Metropolitan Health Service Board in each of the enterprises, businesses or activities described in Schedule "C" herein or any successor to any such entity, to the exclusion of the Hospital Salaried Officers Association of Western Australia (Incorporated) ("HSOA") and of any other organisation of employees registered under the Industrial Relations Act save for such of those salaried employees of the Metropolitan Health Service Board who are eligible for membership of the organisations described in Schedule "D" herein.

2. To the extent that the CSA does not have the right to represent the Industrial interests of salaried employees (including professional, administrative, clerical, technical, and supervisory employees) employed by the Metropolitan Health Service Board in each of the enterprises, businesses or activities described in Schedule "C" herein or any successor to any such entity, the CSA shall have that right.

SCHEDULE "B"

1. The Full Bench has jurisdiction pursuant to Section 72A of the Industrial Relations Act 1979 to grant the orders sought.

2. Prior to 16 July 1997 the CSA had constitutional and award coverage of persons employed in or by the Graylands Selby-Lemnos & Special Care Health Services Board and the Perth Dental Hospital Board.

3. The Hospitals and Health Services (Re-organisation of Hospital Boards) Notice 1997 which came into operation on 16 July 1997 relevantly had the purported effect of re-organising and amalgamating the Graylands Selby-Lemnos and Special Care Health Services Board and the Perth Dental Hospital Board (and various other hospital and health services boards) into a single board assigned the corporate name "Metropolitan Health Service Board".

4. The Hospitals and Health Services (Directions for Re-organisation of Hospital Boards) Instrument 1997 which came into operation on 16 July 1997 directed, inter alia, that—

CLAUSE 6

- (a) any person employed or engaged by a former board (which included the Graylands Selby-Lemnos and Special Care Health Services Board and the Perth Dental Hospital Board) immediately before 16 July 1997 ceased to be so employed or engaged and was employed or engaged by the Metropolitan Health Service Board.
- (b) the operation of paragraph (a) herein in relation to a person did not—
 - (i) affect the person's remuneration or terms and conditions of employment;
 - (ii) prejudice the person's existing or accruing rights;
 - (iii) affect any rights under a superannuation scheme; or
 - (iv) interrupt continuity of service.

5. Notwithstanding the changes referred to in paragraphs 3 and 4(a) herein and given the facts referred to in paragraph 4(b) herein the duties and nature of work completed by the employees whose employment was transferred from the Graylands Selby-Lemnos and Special Care Health Services Board and the Perth Dental Hospital Board to the Metropolitan Health Service Board remains substantially the same. The only change that has occurred in relation to such positions is change of their designated employer.

6. The number of salaried employees employed in professional, administrative, clerical, technical and supervisory capacities by the Metropolitan Health Service Board who were prior to 16 July 1997 employed by or in the Graylands Selby-Lemnos and Special Care Health Services and the Perth Dental Hospital who are members of the CSA is significant.

7. A substantial proportion of such current CSA members have expressed a desire to continue membership of and award coverage by the CSA.

8. The CSA has over its historic coverage of such employees facilitated such enterprises' high degree of industrial harmony, efficiency and productivity.

9. Failure to grant the orders sought would result in a difficult demarcation in the public health sector. This dispute will be potentially exacerbated in the future with the creation of new employment positions and evolution of employment positions in the sector. Such disputes will not be conducive to industrial harmony, minimisation of disputes and therefore not in the public interest.

10. The CSA ought to be granted coverage to the exclusion of the Hospital Salaried Officers Association of Western Australia ("HSOA"), on the following basis—

- (a) That the majority of employees affected would prefer such coverage.

- (b) Such coverage would be consistent with and present an opportunity for furtherance of State legislation and general principles for the rationalisation of industrial representation in enterprises. The orders would create single or limited effective union representation at any given time in the specified enterprises.
- (c) The CSA is better placed to deal with the interests of persons providing dental and mental health services than the HSOA.
- (d) The CSA is better equipped to give its existing and prospective members the industrial and other services which they require. The CSA has better human, financial and technological resources than the HSOA.
- (e) The quality of industrial protection and services provided by the CSA to its members are superior to those of the HSOA.
- (f) The CSA has structures which permit the participation of its members in the affairs of the organisation.
- (g) Historically the CSA has provided impetus in relation to public health sector employees positions in matters of award entitlement etc. In contrast the HSOA has simply followed initiatives introduced by the CSA for its membership.
- (h) If the Applicant's application is not granted, there will be a reduction in union membership as existing CSA members will not join the HSOA.
- (i) In the circumstances the CSA will be a more effective and efficient representative of the effected employees interests and concerns.
- (j) In the circumstances it is fitting and just to allow the CSA coverage of its historically covered positions to the exclusion of the HSOA.

11. Both the CSA and its members will be directly affected by any orders which may be issued by the Full Bench on this issue and therefore have a direct interest.

CPSU/CSA

Enquires: Deana Whittaker

Telephone: 323 3800

August, 1997

SCHEDULE "C"

1. The Graylands Selby-Lemnos and Special Care Health Services.
2. Perth Dental Hospital.

SCHEDULE "D"

1. Australian Liquor, Hospitality and Miscellaneous Workers Union (WA Branch)
2. The Australian Nursing Federation.

No. 1523 of 1997

NOTICE is given of an application by "The Master Gentlemen's Hairdressers' Association of Western Australia Industrial Union of Employers, Perth" to the Full Bench of the Western Australian Industrial Relations Commission for an alteration to rule 1.—Name.

The current rule 1.—Name and the proposed amendment to the Association's name are set out below—

Existing Rule

RULE 1.—NAME

1. The name of the organisation shall be "The Master Gentlemen's Hairdressers' Association of Western Australia Industrial Union of Employers, Perth" (Hereinafter referred to as "the Association").

Proposed Rule

RULE 1.—NAME

"The name of the organisation shall be the Master Hairdressers' Association of Western Australia Industrial Union of Employers. (Hereafter referred to as "the Association")."

This matter has been listed before the Full Bench on the 28th day of October 1997.

A copy of the Rules of the organisation and the proposed rule amendment may be inspected at my office, 16th floor, National Mutual Centre, 111 St George's Terrace, Perth.

Any organisation registered under the Industrial Relations Act 1979, or any person who satisfies the Full Bench that he has a sufficient interest or desires to object to the application may do so by filing a notice of objection in accordance with the "Industrial Relations Commission Regulations 1985".

R. C. LOVEGROVE,
Deputy Registrar.

4 September 1997.